Petition

81-890

No._____

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In the Supreme Court of the United States

OCTOBER TERM 1981

RAPIDES PARISH SCHOOL BOARD, ET AI
Petitioners,

versus

VIRGIE LEE VALLEY, ET AL.,
Respondents,

AND

UNITED STATES OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

(1) Under the facts and circumstances here present, a school system which has been under various Court Orders during the past ten (10) years, declared at least partially unitary by the District Court and Court of Appeals approximately ten (10) years ago, and later subject to a consent decree approved by all parties, did the District Court and the Court below err in finding a constitutional violation and ordering a remedy beyond the scope of any violation in:

A. Reassigning white students located in the predominantly white rural areas of the parish to the few all black schools located in predominantly black residential areas of downtown Alexandria, Louisiana?

B. Reassigning black students from the few all black schools located in predominantly black residential areas in downtown Alexandria, Louisiana into schools across the Red River and in the predominantly white rural areas of the parish?

C. Changing attendance zones, thereby reassigning both black and white students, of two high schools for the purpose of maintaining a racial balance of approximately 40% black students in each high school?

D. Reassigning black students from, and white students to, a school which had originally been an all white elementary school but which, due to population shifts over the past twelve (12) years, had become an all black school?

LISTING OF PARTIES

PETITIONERS:

(1) Rapides Parish School Board, a political subdivision of the State of Louisiana.

(2) The individual members of the Rapides Parish School Board: Terry L. "Buddy" Farrar; D. A. Anderson; Col. George C. Duncan; Douglas A. Jenkins; Euell Williams; Mrs. JoAnn W. Kellogg; Louis V. Crenshaw; Charlie D. Holloway; A. M. Martin; and the Superintendent of Schools, Mr. E. Allen Nichols.

RESPONDENTS:

(1) Virgie Lee Valley and others representing the class of black citizens in Rapides Parish.

(2) United States of America.

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STATUTES:

United States Constitution, Amendment XIV, Section 1 2

No._____

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RAPIDES PARISH SCHOOL BOARD, ET AL.,
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VIRGIE LEE VALLEY, ET AL.,
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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, the Rapides Parish School Board, et al., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on May 18, 1981.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit, rendered May 18, 1981, is reported at 646 F.2d 925 and appears herein as Appendix "A." The opinion of the Court of Appeals on rehearing, rendered August 14, 1981, is reported at 653 F.2d 941 and appears herein as Appendix "B." The opinion of the United States District Court for the Western District of Louisiana was rendered on August 6, 1980, is reported at 499 F.Supp. 490, and appears herein as Appendix "C."

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit on rehearing was entered August 14, 1981. This petition for certiorari is filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, Section 1:

> "Section 1. Citizenship rights not to be abridged by states
>
> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case was previously before the Court below in 1971. It was last before the District Court in 1974. On June 17, 1974, the United States filed an additional motion for supplemental relief with regard to the schools in Wards 1, 8, and 3. (Record-Volume 5, Page 1493.)[1] After discussions between the parties, the Court's Bi-Racial Committee on April 24, 1975 filed a proposed desegregation plan with the Court. (Record-Volume 5, Page 1518). This plan which converted the formerly all black Peabody High School to a magnet high school with attendance zone changes with respect to other high schools was approved by all parties and the Court issued a consent decree to that effect on May 7, 1975. (Record-Volume 5, Page 1532.) Peabody Magnet High School is still operating successfully as a desegregated school today.

At the same time, the School Board agreed with the Government to submit a plan for the pairing of the schools in taxing District 61 (Wards 3 & 4), which had also been an issue in the Government's 1974 motion for further relief. Ward 3 is located in the extreme southwest portion of Rapides Parish and contains the small towns of Cheneyville and Lecompte on Highway 71 located approximately 20 miles apart. Ward 4 contains the community of Forest Hill also located approximately 20 miles away. This motion provided that all high school students, grades 9-12, in all three communities would attend Rapides High School which is located on Highway 71 just out of Lecompte toward Cheneyville.

Under this proposal, Forest Hill would serve all students,

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[1] "Record" references are to the eight-volume record on appeal in this case, which has not yet been filed with this Court.

both black and white, in its District in grades K-8. Cheneyville Elementary School was closed and all students, both black and white, in the Cheneyville School District would attend Lincoln Williams Elementary School in Cheneyville in grades K-8. With respect to the two schools in Lecompte, all students, both black and white, in the Lecompte School District were assigned to Lecompte Elementary School for grades K-5 and Carter C. Raymond for grades 6-8. On September 15, 1976, the District Court issued a Consent Decree, signed by counsel for all parties, implementing the Ward 3 changes. (Record-Volume 6, Page 1730.)

At this point in time, with execution of the Consent Decree, defendants felt that the Government and private plaintiffs were finally satisfied that the school system was now unitary. As the next three years passed without any further complaint from private plaintiffs or the United States, the School Board increasingly felt that it was operating in accordance with the Constitution and could now spend its time and resources in educating children rather than in litigation. However, on August 31, 1979, plaintiffs filed a new motion for additional relief complaining that some one race schools still existed. On October 4, 1979 the United States filed a similar motion.

After various hearings, status conferences, etc., trial was held on April 29 and 30, 1980 at the conclusion of which the Court took all matters under advisement on briefs to be filed by all parties. The Court issued a preliminary opinion on June 6, 1980 and, after a further status conference, issued its final judgment on August 6, 1980.

The Court of Appeals rendered judgment on May 18, 1981

affirming the District Court in part and reversing in part and remanding to the District Court for further consideration of its closure of certain schools in taxing District 61, Wards 3 and 4, the communities of Cheneyville, Lecompte, and Forest Hill. On remand, the District Court declined to change its position on that issue and petitioner has timely noticed an appeal therefrom which is presently pending in the Court of Appeals.[2] Petitioner herein, the defendant School Board, also timely applied for a rehearing of the decision of the Court of

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[2] Although the Court of Appeals indicated that it possibly felt that the District Court had gone too far in its Order concerning the schools in the three (3) communities of Cheneyville, Lecompte and Forest Hill by remanding that issue to the District Court for further consideration, it is a further example of how far beyond this Court's decisions the District Court had gone and the Court of Appeals probably will go.

During the early '70s, by school board action and/or consent decrees from the District Court, the School Board constructed Rapides Parish High School located just outside the town of Lecompte on Highway 71. All students from Cheneyville, Lecompte, and Forest Hill were then assigned to Rapides Parish High School for grades 9-12. At approximately the same time, one of the two schools in Cheneyville, Cheneyville Elementary School, which was formerly all white, was closed and all students, black and white, were assigned to the Lincoln Williams school in Cheneyville for grades K-8; the two schools in Lecompte were paired with Lecompte Elementary serving grades K-5 and Carter C. Raymond becoming the Jr. High School, both serving all students, black and white, in the Lecompte area; the only school in the Forest Hill community in Ward 4, Forest Hill High, was reduced to a K-8 for all students, black and white, in the Forest Hill school area.

As a result of this pairing, Forest Hill became a majority white, but desegregated, school. However, in the space of approximately one year, the two schools in Lecompte and Lincoln Williams school in Cheneyville, reverted to virtually all-black schools because of the white students in those two communities leaving the public school system completely. The District Court's present order now again attempts to achieve a racial balance in those three communities by again reassigning all of the students, black and white, in all three communities to the two schools in Lecompte, closing Lincoln Williams in Cheneyville and the Forest Hill school in the Forest Hill community as well as reaching into the Poland community for white students to assign to the two schools in Lecompte. This has again resulted in the loss of virtually all of the white students which previously attended the Forest Hill school as well as those reassigned from the Poland community.

This amounts, in effect, to punishing the students in the Cheneyville and Forest Hill communities by closing their schools merely because the white students in the towns of Cheneyville and Lecompte left the public school system. The District Court has now reconsidered this matter on remand and reaffirmed its original judgment. This issue is again presently pending on appeal in the Fifth Circuit Court of Appeals.

Appeals and on August 14, 1981, the Court of Appeals rendered an additional opinion remanding to the District Court an additional issue involving a mandatory racial employment quota. This issue is presently pending in the District Court on remand.[3] The balance of the District Court's decision which was affirmed by the Court of Appeals is the subject of this Petition for Certiorari.

The Court will note that various other appeals which enjoined certain private citizens from use of a particular school, actions of certain state officials, and a confrontation between a state district court and the United States District Court were consolidated with the main appeal in the Court below. Petitioner herein, the Rapides Parish School Board, was not involved in such confrontations or appeals and they are not the subject of this Petition for Certiorari.

Rapides Parish contains one large city, the city of Alexandria, which is located on the south bank of the Red River in the north central area of the Parish. Directly across Red River from the city of Alexandria is the town of Pineville and just north of it is the town or community of Tioga. Other outlying rural communities are Buckeye, Oak Hill, Boyce, Wet-

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[3] With respect to this issue, the District Court had previously issued orders establishing a 31.5% quota of black teachers in the system as a whole, designating certain schools to have principals of a particular race, and designating certain schools to have assistant principals of an opposite race from the principal, all clearly contrary to *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1969), and its progeny. See also, *Carter v. West Feliciana Parish School Board*, 432 F.2d 875 (5th Cir. 1970) and *George v. Davis*, 365 F.Supp. 446 (M.D. LA. 1973) affirmed 493 F.2d 663 (5th Cir. 1974). The Fifth Circuit, in its Opinion on the Merits of this case, reported at 646 F.2d 925, did not specifically address this issue. On application for rehearing by the defendant School Board, the Fifth Circuit Court of Appeals issued an additional Opinion on August 14, 1981, reported at 653 F.2d 941, also remanding this issue to the District Court for further consideration. That issue is presently pending in the District Court on remand on motion filed by the School Board. It, also, is an example of how far beyond the applicable law the District Court had gone.

termark, Glenmora, Cheneyville, LeCompte, Poland and Forest Hill. The schools in these rural communities generally serve all children in their community, black and white and have previously been desegregated.

According to the figures utilized by the District Court, the student population of the Parish is 8,793 (35.7%) black, and 15,829 (57.3%) white. (Appendix C - page 6.) However, as also noted by the District Court on Page 6 of its Final Judgment, 6.601% of the 8,793 black students are located in the city of Alexandria in Wards 1 and 8 where there are only 5,130 white students for a 56.3% black and 43.7% white ratio. Most of the black citizens in Alexandria have chosen to reside primarily in one area of Alexandria and, therein lies the real problem.

Although all of the high schools in the Parish and all of the junior highs except one, Jones Street, have racially mixed student bodies as shown by the Court's figures, the District Court, for the sole purpose of racially balancing Jones Street Junior High, rearranged the zones for other junior highs and created a zone for Jones Street Junior High that requires the bussing of students to Jones Street Junior High not only from Pineville and Tioga, across the river, but also from as far away as Buckeye, Ruby-Wise, and Poland. The estimated bussing distance, one-way for some of these junior high students is, for example, from Poland, as great as 40 miles.

At the elementary school level in Alexandria, the District Court converts four of the only seven previously all black elementary schools (South Alexandria Elementary, Lincoln Road Elementary, Peabody Elementary and Acadian Elementary) into sixth grade centers to be attended by all

sixth grade students in Wards 1, 8, and 9, and Ruby Wise. The third, fourth, and fifth grade black students from those four elementary schools are then reassigned into the remaining already racially mixed K-5 elementary schools in Wards 1, 8, and 9. One of those four sixth grade centers, Acadian Elementary School, was originally opened in a predominantly white neighborhood and had a predominantly white student body. However, due to population shifts over which the School Board had no control, that school's student body composition became approximately 50% black and 50% white and then ultimately became an all black school

The District Court then converts the three remaining all black elementary schools (South Alexandria, Lincoln Road, and Silver City) into K-2 primaries which it projects to remain all black. The Court's original proposal also reassigned the K-2 students in the four elementaries converted into sixth grade centers to these three K-2 primaries. However, at the insistence of the Government, it reassigned those black K-2 students to elementary schools across the Red River in Pineville.

In addition to reassigning and bussing students, both black and white, the District Court's judgment also further intrudes into the educational process by maintaining a system-wide racial ratio, or quota, of 31.5% black, by designating the race of the principals to be assigned to certain schools, and by requiring that the assistant principal at any school be of the opposite race from the principal of that school. (District Court Final Judgment, Page 8 and Page 14, Paragraph 3.)

The District Court later amended its original judgment in a fairly substantial respect. This amendment affects

Brasher Elementary (K-5) whose enrollment the Court had projected at being 199 white students and 146 black students or 43.9% black. It was found that due to renovation of a federal low-cost housing project during the summer that substantial numbers of black students had moved into the Brasher Elementary School Zone, converting it from majority white to majority black. The Court's amendment reassigned 118 of these additional black elementary students across the Red River to the Tioga and Ball Elementary Schools.

REASONS FOR GRANTING THE WRIT

I.

The Court below and the District Court have misinterpreted and/or missapplied the decisions of this Court in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 86, 98 L.Ed. 873 (1954); *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 24 L.Ed.2d 19, 20 S.Ct. 29 reh den 396 U.S. 976, 24 L.Ed.2d 447, 90 S.Ct. 437, *Swann v. Charlotte Mecklenburg Board of Education*, 502 U.S. 1, 91, S.Ct. 1267, 28 L.Ed.2d 554 (1971); *Keyes v. Denver School District Number One*, 413 U.S. 189, 93 S.Ct. 2694, 37 L.Ed.2d 548 (1973); and *Milliken v. Bradley*, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974) and the principles established by those decisions.

The misinterpretation and/or misapplication of the general principles established by those decisions to the facts and circumstances present in this School System appear to say that virtually no school system, particularly those which once practiced segregation, can ever become unitary as long

as white citizens and black citizens continue, by choice, to live in separate, virtually one-race, residential areas or neighborhoods.

Such interpretation and application by the District Court and the Court below also apparently mean that when the citizens of this nation reject the Federal Court remedy and leave the public school system rather than attend the particular schools to which they have been assigned by Federal Court Order, which neither the Federal Court nor the School Board can prohibit or control as recognized by the Court below, and schools once again become predominantly black or predominantly white, that the unitariness achieved on paper by the Federal Court Order ceases to exist.

The immediate next step, as was done in this case, is to again reassign students in order to attempt to achieve again a paper racial balance in the schools. Unfortunately, the result is once again the same — more students leave the public school system and the schools again become predominantly black.

Petitioners respectfully suggest that the cited decisions of this Court, regardless of certain language contained in any one of them, do not warrant the continued and repetitive federal judicial intrusion into present and future operation of local public school systems by the States and their local educational agencies. As was said in *Milliken, supra*,

> ". . . The aim of the Fourteenth Amendment guarantee of equal protection on which this litigation is based is to assure that State-supported educational opportu-

> nity is afforded without regard to race; it is not to achieve racial integration in public schools . . ."

The action of the District Court here, affirmed in large part by the Court below, goes even a step beyond the *Milliken* prohibition by attempting not only to re-integrate, but to racially balance the schools.

II.

Petitioners also respectfully submit that the District Court and the Court below also erred in not following the principles enunciated in *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 53 L.Ed.2d 851, 97 S.Ct. 2766 (1977) (Dayton I); *Dayton Board of Education v. Brinkman*, 443 U.S. 526, 61 L.Ed.2d 720, 99 S.Ct. 2971 (1979) (Dayton II); *Columbus Board of Education v. Penick*, 443 U.S. 449, 61 L.Ed.2d 666, 99 S.Ct. 2941, reh den 62 L.Ed.2d 121, 100 S.Ct. 186 (1979); *Austin Independent School District v. United States*, 429 U.S. 990, 50 L.Ed.2d 603, 97 S.Ct. 517 (1977); *Washington v. Davis*, 426 U.S. 229, 48 L.Ed.2d 597, 96 S.Ct. 2040 (1976); *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 50 L.Ed.2d 450, 97 S.Ct. 555 (1977) and *City of Mobile v. Bolden*, 446 U.S. 55, 64 L.Ed.2d 47, 100 S.Ct. 1490 (1980), which require a finding of discriminatory acts by the State or its local educational agency with discriminatory intent before a violation can be found and a remedy appropriate to the violation can be imposed.

There is no finding, nor even an allegation, that the School System is not unitary in all of the facets of the operation of a school system such as faculty, transportation, fa-

cilities, extracurricular activities, etc. The only complaint is with the fact that some schools have a student body which is composed of students predominantly of one race, i.e., a few all black elementary schools and one junior high in downtown Alexandria, Louisiana and a few predominantly white schools in the outlying rural areas of the Parish.

There is no finding in the opinion of the District Court nor in the affirming opinion of the Court of Appeals that the State or its local School Board has assigned students to schools because of their race or that they have gerrymandered school attendance zones in order to create white or black schools. To the contrary, it is obvious that the existing attendance zones were designed to accomplish as much desegregation as was practical and feasible. The only finding by either Court of any discrimination whatsoever is in the "existence" of the few one-race black schools in downtown Alexandria and the few one-race white schools in the outlying rural areas of the Parish. Neither Court points to any action, or lack of action, by the State or the local School Board with regard to those schools which could be considered discriminatory, much less showing any discriminatory intent.

Petitions respectfully suggest that in the absence of such specific findings of discriminatory acts and discriminatory intent, the decision of the Court below is clearly in conflict with the above cited decisions of this Court. The decision of the Court of Appeals would also appear to be in conflict with its own recent decision in *U.S. v. Gregory-Portland Independent School District*, 654 F.2d 989 (5th Cir. April 20, 1981). In *Gregory*, the Court below correctly followed this Court's decisions with regard to discriminatory acts and dis-

criminatory intent in ruling in favor of the defendant School Board. No such discussion of elements of discriminatory acts and discriminatory intent can be found in its decision in this case.

Petitioners would also respectfully suggest that the repairing and clustering ordered by the District Court and its constant, almost annual, rezoning of the attendance zones for two high schools in order to maintain a 60% white - 40% black racial balance in each school has so far departed from the accepted and usual course of judicial proceedings, sanctioned by the Court of Appeals, as to call for an exercise of this Court's power of supervision.

Exercise of this Court's power of supervision at this time is extremely important because other district courts in other cases are also going far beyond the intent of the cited decisions of this Court in this area of the law. In *Trahan v. Lafayette Parish School Board*, CA No. 10-903, Western District of Louisiana, every change, no matter how minor, in a $50 million school construction and renovation program approved by the taxpayers and citizens of Lafayette, must be submitted to the District Court and the opposing parties for approval. In *Davis v. East Baton Rouge Parish School Board*, CA No. 1662, Middle District of Louisiana, the School Board has been refused permission to use a school building, closed as a school under the District Court's desegregation order, as a teacher training center for lack of justification and the District Court has ordered the Superintendent to submit any proposals or modifications to the desegregation order directly to the Court for approval or disapproval and has prohibited him from submitting same to his School Board for approval.

ARGUMENT

I. UNDER THE FACTS AND CIRCUMSTANCES HERE PRESENT, DID THE COURT BELOW ERR IN HOLDING THE PRESENT OPERATION OF THE SCHOOL SYSTEM TO BE IN VIOLATION OF THE CONSTITUTION WITHOUT FINDING ANY SPECIFIC ACTS OF DISCRIMINATION, WITH DISCRIMINATORY INTENT, BY THE SCHOOL BOARD AND DID THEY IMPOSE A REMEDY WHICH EXCEEDS ANY POSSIBLE VIOLATION?

The first, and most basic, issue presented here is the threshold determination of whether this School Board is presently operating its school system in a manner which discriminates against black students and citizens in violation of the Fourteenth Amendment to the Constitution of the United States. Defendants respectfully submit that there is no racial discrimination in the present operation of the school system.

This school system, like other school systems in this State, the South, and the Nation, has for many years labored through the desegregation process. At one time, both students and teachers were assigned to schools because of their race, with black teachers and black students assigned to some schools and white teachers and white students being assigned to other schools. The school system has long ago ceased assigning either students or teachers to particular schools because of their race, except when directed to do so by the Federal Court.

Some changes in the school system have been instituted voluntarily while others have been implemented at the direction of the Court. During the past fifteen years, these changes have been instituted on an almost annual basis due to ever-

changing and new interpretations of the meaning and requirements of the Constitution by federal courts. Over this period of time, these decisions seem to have brought us full circle from prohibiting the state from assigning students to particular schools because of their race, *Brown vs. Board of Education*, 347 U.S. 483, 98 L.Ed. 873, 74 S.Ct. 686 (1954), to absolutely requiring the assignment of students to particular schools because of their race, the position apparently taken by the Government and private plaintiffs, and apparently contray to this Court's decision in *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 24 L.Ed.2d 19, 90 S.Ct. 29 (1969) defining a unitary school system as one in which no child is excluded, directly or indirectly, from any school in the system because of his race, color, or national origin.

There is no allegation that the system is not unitary in all other areas (faculty, transportation, etc.) except racial composition of student bodies in some schools and even here, all of its high schools have substantially mixed student bodies; all of its Junior high schools except one have substantially mixed enrollments; and only seven of its twenty (20) elementary schools have predominantly black student bodies. Petitioners respectfully submit that these few one race schools exist solely because of residential preference of black and white parents and not to any discriminatory acts of petitioner.

For example, one of the black elementary schools of which the Government and private plaintiffs complained, Acadian Elementary, originally opened in a predominantly white neighborhood with an all white student body. However, due to movement of population, over which the School Board obviously has no control, the composition of the student body

at that school went from virtually all white, to thoroughly mixed, to all black. Surely that all black elementary school cannot be considered a vestige of the dual school system.

In addition, (as noted in footnote 2, page 5) under the 1975 Consent Decree, the schools in Ward 3 Cheneyville and Lecompte were, in effect, paired in order to eliminate the remaining one-race schools in those communities. Cheneyville Elementary School was closed and all children, black and white, were assigned to Lincoln Williams, the other school in Cheneyville. In Lecompte, Lecompte Elementary and Carter Raymond were paired. The result was that most of the white children in Cheneyville and Lecompte left the public school system and these schools, consequently, remain predominantly black. Again, the School Board had no authority nor power to keep those children from leaving the school system and consequently should not be assigned a constitutional violation because these schools have once again become predominantly black schools.

In spite of this residential choice by citizens, the District Court again finds the school board at fault and renews the numbers or racial balancing game. For example, the District Court, as it has done in past years, redraws the attendance zones for Alexandria Sr. High School and Bolton High School in order to maintain a racial balance at each school of approximately 60% white and 40% black students. The sole purpose and effect of this rezoning is to transfer black students out of these schools or transfer white students into these schools, or both, in order to maintain that racial balance. This rezoning does not appear in the District Court's final judgment (Appendix C) as it was done by subsequent order. The District Court

re-paired the schools in Wards 3 and 4 by closing the remaining school in the Cheneyville community and the only school in the Forest Hill community and reassigning those students to the two schools in Lecompte as well as reassigning white students from the Poland community in Ward 2 into Lecompte. The sole purpose of this action was also to recreate a racial balance in the remaining schools in that area which the previous pairing had caused to again become predominantly black due to the loss of white students in that area from the public school system. Where does it end?

Somewhere and someday, the Courts must recognize this phenomenon of residential preference for the constitutional right of association which it truly is. The Courts must recognize that the mere fact that a school serving a black residential area has an all black student body imposes no stigma on black citizens or black children. The fact of the school having an all black student body is merely a by-product of the right of black citizens to choose to live with other black citizens in predominantly black neighborhoods.

Defendants respectfully submit that now is the time, and Rapides Parish the place, to return to the teachings of *Brown v. Board of Education, supra*, the definition of a unitary system as set forth by the Supreme Court in *Alexander v. Holmes County, supra*, and the principle set forth in *Milliken v. Bradley*, 418 U.S. 717, 94 Supreme Court 3112, 41 Lawyers Edition 2nd 1069 (1974) that:

> ". . . the aim of the Fourteenth Amendment guarantee of equal protection on which this litigation is based is to assure that state supported educational opportunity is afforded without regard to race; it is not to achieve racial integration in public schools . . ."

Defendants respectfully submit that now is the time, and Rapides Parish is the place, to cease playing the numbers game which has resulted in reducing a 115,000 pupil school system with a 70% white majority in 1958 to an 80,000 student school system which is 85% black in 1980, as occurred in Atlanta, Georgia. See *Calhoun v. Cook*, 522 Fed.2d 717 rehearing en banc denied 525 Fed.2d 1203 (Fifth Circuit 1975). This same erosion has occurred in other school systems such as Memphis, Tennessee; Shreveport, Louisiana; New Orleans, Louisiana and Houston, Texas among others. Even though the Orleans Parish School System was declared unitary by Judge Herbert W. Christenberry on August 22, 1975 (Such unitariness noted with approval by the Fifth Circuit Court of Appeals on re-hearing in *Calhoun v. Cook, supra*, in Page 1204), it was not until the system had eroded to an 85% black school system with far more one-race schools in both number and percentage than this school system.

The language of Judge Clark in *Calhoun, supra*, 522 F.2d at 718, is particularly worth noting:

> ". . . Since 1958 when this school desegregation suit was filed, the winds of legal effort have driven wave after wave of judicial rhetoric against the patrons of the Atlanta public school system. Today hindsight highlights the resulting erosion, revealing that every judicial design for achieving racial desegregation in this system has failed. A totally segregated system which contained 115,000 pupils in 1958 has mutated to a substantially segregated system serving only 80,000 students today. A system with a 70% white pupil majority when the litigation began has now become a district in which more than 85% of the students are black . . . ."

Petitioner understands that the present racial composition of the Atlanta school system is *now* closer to 95% black.

Likewise, the pairing or clustering plan imposed upon the Houston Independent School District resulted in the School System's bussing black students from one previously all black school to another school which had turned all black because of the pairing plan and the resultant loss of white students from the school system. Due to the failure of the pairing and clustering plans imposed on the Houston Independent School District, and the resultant one-race schools, the District Court for the Southern District of Texas, Houston Division, Judge Robert O'Conor, Jr., presiding, recently rejected demands by private plaintiffs and the federal government for additional pairing and clustering and declared the Houston Independent School District to be unitary, although encouraging it to expand its magnet school program. See *Ross, et al. v. Houston Independent School District, et al.*, CA No. 10,444, United States District Court, Southern District of Texas, Houston Division, decided June 17, 1981. In *Ross*, the District Court quoted Justice Powell's dissent in the Dallas desegregation case saying:

> "Justice Powell, dissenting from the dismissal of certiorari as improvidently granted in the Dallas desegregation case, explained why the 'pursuit of racial balance at any cost—the unintended legacy of *Green*— is without constitutional or social justification':
>
> > " 'By acting against one-race schools, courts may produce one-race school systems. Parents with school-age children are highly motivated to seek access to schools perceived to afford quality education. A desegregation plan without community support, typi-

> cally one with objectionable transportation requirements and continuing judicial oversight, accelerates the exodus to the suburbs of families able to move. The children of families remaining in the area affected by the court's decree are denied the opportunity to be part of an ethnically diverse student body . . . . The general quality of the schools also tends to decline when substantial elements of the community abandon them.'
>
> Tasby v. Estes, 100 S.Ct. 716, 723 (1980) (mem.; Powell, J., dissenting)."

Petitioners respectfully suggest that the re-pairing or re-clustering and re-zoning ordered by the District Court here for the purpose of re-achieving a racial balance should now be rejected for Rapides Parish just as the District Court rejected same for Houston, Texas as being neither necessary nor desirable, nor legally or morally required.

We respectfully submit that it is grossly unfair to black and white children alike to saddle the School Boards with the responsibility of eliminating such so-called "racial isolation" when it is beyond the authority and power of the School Board to do so and when it has such devasting effect on the school system. And, the devastating effect is not only in the desegregation of the system physically by the loss of white students, it is likewise devastating in its effect on the elimination of racial prejudice and the ability of our citizens, white and black, to come to know one another and respect one another as individuals rather than by race. It makes it impossible for citizens to view one another in terms of the individuality of each and focuses every aspect of human life on race.

It is this ethnic population movement and growth and residential preference of citizens which has caused the residential ethnic impaction which exists today and which causes the existence of predominantly one-race schools, both black and white. This residential racial isolation is particularly apparent in almost every major metropolitan area in this Nation. This phenomenon, ethnic residential preference and impaction, has been noted by this Court as indicated by Justice Powell in his concurring opinion in *Austin Independent School District v. United States*, 429, U.S. 990, 50 L.Ed.2d 603, 97 S.Ct. 517 (1977) where we find him noting that,

> "' . . . The principle cause of racial and ethnic imbalance in urban public schools and across the country—north and south—is the imbalance in residential patterns . . .' ' . . . Such residential patterns are typically beyond the control of school authorities. For example, discrimination in housing — whether public or private — cannot be attributed to school authorities . . .' ' . . . Economic pressures and voluntary preferences are the primary determinants of residential patterns . . .'"

This phenomenon of ethnic residential preference is the problem in Rapides and as indicated by Justice Powell is ". . . beyond the control of school authorities . . ." and ". . . cannot be attributed to school authorities . . ."

Furthermore, in all cases involving discrimination and denial of Fourteenth and Fifteenth Amendment rights, this Court has continually held that there must be a showing of intentional discrimination on the part of the state or state agency. *See Milliken, supra.; Washington v. Davis*, 426 U.S. 229, 48 L.Ed. 597, 96 S.Ct. 2040 (1976); *Village of Arlington Heights v. Metropolitan Housing Development Corporation*,

429 U.S. 252, 50 L.Ed.2d 450, 97 S.Ct. 555 (1977); *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 53 L.Ed.2d 851, 97 S.Ct. 2766 (1977); *Austin Independent School District v. United States, supra.;* and *City of Mobile v. Bolden*, 44 U.S. 55, 64 L.Ed.2d 47, 100 S.Ct. 1940 (1980). As Justice Powell noted in *Austin*,

> "**Apparently misconceiving** the impact of language in *Green v. County School Board of New Kent County*, 391 U.S. 430, 442, 20 L.Ed.2d 716, 88 S.Ct. 1689 (1968), to the effect that there should be no 'Negro' or 'white' school, the Court of Appeals seems to **believe every school must be racially balanced to some degree** . . ." (emphasis added)

We also find the Court saying in *Dayton, supra*, at page 859, that

> ". . . The finding that the pupil population in the various Dayton schools is not homogeneous, standing by itself, is not a violation of the Fourteenth Amendment in the absence of a showing that this condition resulted from **intentionally segregative actions** on the part of the Board. . . ."

In *City of Mobile v. Bolden, supra*, this Court again reaffirms the principle that there must be a finding of intentional, purposeful discrimination before a Fourteenth or Fifteenth Amendment violation can be found. Although this case dealt with voting rights rather than school desegregation, it clearly reaffirmed the principle that intentional discrimination must be proven in all types of Fourteenth and Fifteenth Amendment cases, including school desegregation cases.

The Government's evidence of discriminatory intent in this case is limited solely to the fact that at some time in the

past the School Board operated a dual school system under state law. However, in addition to the above principles reiterated in *City of Mobile, supra*, set forth above, we would point out the following language of Mr. Justice Stewart, in that case,

> ". . . Third, the district court and the Court of Appeals supported their conclusion by drawing upon the substantial history of official racial discrimination in Alabama. **But past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful. . . .**" (emphasis added)

We would add to that the often quoted biblical axiom that the sins of the father should not be visited upon the child. The children in this school system today had nothing to do with any past discrimination during the time of their fathers or grandfathers, yet, the burden is clearly being placed on today's children.

As Mr. Justin Powell said in *Austin, supra*, in Footnote 7 at Page 605:

> "A related equitable principle, also applicable in fashioning a desegregation remedy, is that a court has the duty to '**balanc[e] . . . the individual and collective interests.**' *Milliken v. Bradley*, 418 U.S., at 738, 41 L.Ed.2d 1069, 94 S.Ct. 3112. **The individual interests at issue here are as personal and important as any in our society. They relate to the family, and to the concern of parents for the welfare and education of their children - especially those of tender age. Families share these interests wholly without regard to race, ethnic origin, or economic status.** It is also to be remembered, in granting equitable relief, that

> a desegregation decree is unique in that its burden falls not upon the officials or private interests responsible for the offending action **but, rather, upon innocent children and parents.**" (emphasis added)

If, and only if, this Court should affirm the District Court on the threshold issue and find the school system to be in violation of the Constitution, defendants respectfully submit that the remedy imposed by the District Court improperly exceeds that violation. The Supreme Court has consistently held in these cases that where a Federal Court is exexercising its equitable remedial power, the nature of the violation determines the scope of the remedy. *Milliken v. Bradley*, 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1059; *Swann v. Charlotte Mecklenburg Board of Education*, 402 U.S. 21 L.Ed.2d 554, 91 Supreme Court 1267; and *Austin Independent School System v. the United States*, 429 U.S. 990, 50 L.Ed.2d 603, 97 S.Ct. 517.

In *Milliken and Swann, supra*, this Court said,

> " 'the task is to correct by a balancing of the individual and collective interest, 'the condition that offends the Constitution.' A federal remedial power may be exercised 'only on the basis of a constitutional violation' and, [a]s with any equity case, the nature of the violation determines the scope of the remedy. *Milliken v. Bradley*, 418 U.S. 717, 736, 41 L.Ed.2d 1069, 94 S.Ct. 3112 (1974), quoting *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16, 28 L.Ed.2d 554, 91 S.Ct. 1267 (1971)."

or, as stated by Justice Powell in *Austin, supra*,

> ". . . As suggested by this Court's remand premised upon

> *Washington v. Davis, supra*, the Court of Appeals may have erred by a **readiness to impute to school officials a segregative intent far more pervasive than the evidence justified.** That Court also seems to have **erred in ordering a desegregation plan far exceeding any identifiable violation of constitutional rights**. . . ." (emphasis added)

It was neither necessary nor appropriate to close an excellent facility such as the Forest Hill School for which the citizens of Forest Hill have paid substantial taxes. This school is located in a separate Ward of the Parish and was serving all students, black and white, in the Forest Hill community. Both black and white parents joined in the opposition and demonstration objecting to the closing of the Forest Hill School. It was likewise unnecessary and undesirable to deprive the black and white children of Cheneyville of their school by closing Lincoln Williams.

Neither was it necessary or appropriate to reassign children in Ward 11, Buckeye and Ruby-Wise, and in Ward 2, Poland, to Jones Street Junior High. These were also separate communities with schools serving all the children, black and white, who resided in those communities.

Defendants also submit that the District Court erred in refusing to recognize the concept of "neighborhood schools" in the rural areas of the Parish, as he did for the metropolitan area. We respectfully submit that this conclusion of the District Court indicates a misconception of rural life and rural communities in America. It is true that a rural community does not have the clearly delineated neighborhoods, streets, blocks, etc. as a metropolitan area. But it is also true that the schools in

that community are as important to those people, if not more important, than a school in a metropolitan neighborhood. It is generally the only school available and is the center of the community activities.

This refusal of the District Court to recognize "rural neighborhood schools" is due in part to the failure of the District Court to follow the principles enunciated by this Court in *Arlington Heights, Keyes, Dayton, Washington v. Davis*, and *City of Mobile, supra,* with regard to a finding of discriminatory acts and discriminatory intent. Instead, the District Court simply assumed that because there was once a dual system, the mere "existence" of any one-race schools was a constitutional violation and presumptive evidence of discriminatory acts and intent without further inquiry as to the reason for the existence of those few one-race schools. The Court of Appeals apparently affirms the District Court's position in large part in this case although in its more recent decision in *U.S. v. Gregory-Portland Independent School District*, 654 F.2d 989, (5th Cir. August 20, 1981), it clearly adheres to the admonitions of this Court in the cited decisions. In that case, the Court of Appeals thoroughly discussed the specifics of possible discriminatory acts and discriminatory intent, presumptions, and burden of proof, in accordance with this Court's decisions, and then found in favor of the defendant School Board. Such consideration was not given to the School Board in this case.

The obvious attempt at racial balancing by the District Court in re-pairing and clustering previously paired schools, in constantly changing attendance zone lines for two high schools in order to maintain a 60% white - 40% black racial

balance, and in establishing a hiring quota of 31.5% black are clear indications of how far the District Court went beyond the established principles of *Brown, Alexander, Keyes, Milliken* and other decisions of this Court specifically not requiring such racial balancing. The general tenor of the decision of the Court of Appeals in this case is to approve such racial balancing by the District Court.

Petitioners would further respectfully suggest that another reason for the exercise of this Court's supervisory jurisdiction in this case is that this tendency to constantly go beyond this Court's decisions and always further intrude into the operation of public schools by local educational agencies is not limited to just this case or just this District Court. As noted heretofore, other District Courts, as in Lafayette and Baton Rouge, La., are continuing and extending this intrusion of the Federal Judiciary into the operation of local governments and the affairs of local citizens.

This Court should exercise its supervisory jurisdiction in this case in order to halt this constant extension of the power of the federal judiciary over state and local matters and this constant intrusion by the federal judiciary into functions which properly belong to the state and its local agencies under our Constitution.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit Court of Appeals in this matter.

Respectfully submitted,

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Appendix

81-890

No._____

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

In the Supreme Court of the United States

OCTOBER TERM 1981

RAPIDES PARISH SCHOOL BOARD, ET AL.,
Petitioners,

versus

VIRGIE LEE VALLEY, ET AL.,
Respondents,

AND

UNITED STATES OF AMERICA,
Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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APPENDIX A

VALLEY v. RAPIDES PARISH SCH. BD.

Cite as 646 F.2d 925 (1981)

Virgie Lee VALLEY et al.,
Plaintiff-Appellee,

United States of America,
Intervenor-Appellee,

v.

RAPIDES PARISH SCHOOL BOARD et al.,
Defendants-Appellants.

Virgie LeeVALLEY et al.,
Plaintiffs-Appellees,

United States of America,
Intervenor-Appellee,

v.

RAPIDES PARISH SCHOOL BOARD, et al.,
Defendants,

Clyde Holloway et al.,
Defendants-Appellants.

Virgie Lee VALLEY et al.,
Plaintiffs-Appellees,

v.

RAPIDES PARISH SCHOOL BOARD,
Defendant,

v.

Nelson LaBORDE et al.,
Intervenors-Appellants,

v.

UNITED STATES of America,
Intervenor-Appellee.

Virgie Lee VALLEY et al.,
Plaintiffs-Appellees,

United States of America,
Intervenor-Appellee,

v.

RAPIDES PARISH SCHOOL BOARD,
Defendant,

Marshall T. Cappel, Sheriff of Rapides Parish,
Movant-Appellant.

Virgie Lee VALLEY et al.,
Plaintiffs-Appellees,

v.

RAPIDES PARISH SCHOOL BOARD,
Defendant,

v.

Nelson LaBORDE et al.,
Intervenors-Appellants,

v.

UNITED STATES of America,
Intervenor-Appellees,

Virgie Lee VALLEY et al.,
Plaintiffs-Appellees,

and

United States of America,
Intervenor-Appellee,

v.

RAPIDES PARISH SCHOOL BOARD,
Defendant,
State of Louisiana et al.,
Defendants-Appellants.

Nos. 80-3722, 80-3776, 80-3855, 80-3988, 80-3008, 81-3013, 81-3033 and 81-3083.

United States Court of Appeals,
Fifth Circuit.
Unit A
May 18, 1981.

Rehearing Denied No. 80-3988
July 9, 1981

Opinion on Rehearing, No. 80-3722

Aug. 14, 1981.
See 653, F.2d 941.

Appeals from the United States District Court for the Western District of Louisiana.

Before COLEMAN, GARZA and SAM D. JOHNSON, Circuit Judges.

GARZA, Circuit Judge:

Twenty-seven years after *Brown v. Board of Education* and sixteen years after the commencement of this litigation, we are confronted with yet another set of appeals arising from implementation of the command to desegregate public schools in Rapides Parish, Louisiana. The current appeals stem from the district court's response to a Motion for Supplemental Relief filed by the private plaintiffs in 1979. We consolidated them for argument, and now render our decision in each by this opinion.

Though the Rapides Parish School Board was long ago admonished of its continuing duty to accomplish the dismantling of racial duality in pupil and staff assignments, complex and important issues have been raised by the effort to achieve this goal. Is the school system fully unitary? If not, what further relief is required? Are the orders issued below a proper response to the facts of the case and previous directives of this court?

Sadly, these are not the only issues. This case has been unnecessarily complicated by the failure of all parties in interest to adequately aid the district court, as well as by overt interference with and defiance of its orders by certain elements in the community. We are therefore called upon to decide whether additional orders issued by the district court in aid of its jurisdiction and authority were within the permissible bounds of discretion.

BACKGROUND

While Rapides Parish is predominantly rural, it contains one large city, Alexandria. A single school system serves the entire parish. Prior to 1965, the system was classically dual, with one set of schools operated for white pupils and another for blacks.

This litigation was instituted on March 23, 1965, and resulted in the employment of a number of devices to establish a unitary system. Originally, the district court approved a desegregation plan relying on "free transfer" provisions, which remained in effect until 1969. Under its operation, white pupils continued to attend all-white schools and more than 96 percent of black pupils continued to attend all black schools.

The plaintiffs moved for supplemental relief following the Supreme Court's decision in *Green v. School Board of New Kent County*, 391 U.S. 430, 88 S.Ct. 1698, 20 L.Ed.2d 716

(1968), invalidating a freedom of choice plan which had failed to achieve meaningful desegregation. The district court held that the plan then in effect *did* create a real prospect of dismantling the dual school system. *Conley v. Lake Charles School Board*, 293 F. Supp. 84, 88 (W.D.La. 1968).

We reversed and remanded for the implementation of a new plan. *Hall v. St. Helena Parish School Board*, 417 F.2d 801 (5 Cir. 1969), *cert. denied* 396 U.S. 904, 90 S.Ct. 218, 24 L.Ed.2d 180 (1969). Upon review of the relevant statistical facts, it was held "abundantly clear that freedom of choice as presently constituted and operating . . . does not offer the 'real prospect' contemplated by *Green*." 417 F.2d 801 at 809. Alternative measures were suggested, including "geographic zoning . . . pairing of grades or of schools, educational clusters or parks, discontinuance of use of substandard buildings and premises, rearrangement of transportation routes, consolidation of schools, appropriate location of new construction, and majority-to-minority transfers." *Id.*

Once again, however, there was a disparity between the intended effect of relief and the actual result. In 1969 and 1970, the court below adopted three neighborhood zoning plans, each of which was reversed for failure to present an adequate prospect of dismantling the dual school system.

In July of 1969, the court approved a plan offered by the school board which relied on neighborhood zoning or partial pairing, but left 13 schools over 90 percent black. This court reversed and remanded in *Valley v. Rapides Parish School Board*, 422 F.2d 814 (5 Cir. 1970), again ordering the formulation of a new plan.

The district court next chose a school board plan which made minimal student assignment changes, citing "the extreme shortness of time confronting the school board." We reversed summarily, remanding the case with "instructions to

the district court to implement pendente lite [a plan offered by HEW] . . . or a plan devised by the district court to accomplish a unitary system within the teachings of *Green v. County School Board.*" *Valley v. Rapides Parish School Board*, 423 F.2d 1132, 1133 (5 Cir. 1970).

On remand, the district court adopted its own plan for Wards 1 and 8 of the parish, which encompass the city of Alexandria. (See the map of Rapides Parish attached as an appendix hereto.) The plan assigned pupils in those wards to the schools nearest their homes, and reinstated previous plans for the remaining wards with some modifications. Once again, this court was obliged to partially reverse. In *Valley v. Rapides Parish School Board*, 434 F.2d 144, 145 (5 Cir. 1970), those portions of the order below "which [did] not concern either student assignment in Wards 1 and 8 or the majority-to-minority transfer policy" were affirmed. As for the city wards, the court noted that black pupils accounted for 47 percent of the total enrollment and held:

> Because of the residential dichotomy between Alexandria's black and white citizens, the so-called "neighborhood school plan" adopted by the district court, although admittedly impartial as to race, still leaves 60% of the black students in schools where their race is an approximately 90% or greater majority. Of the twenty-four remaining schools seven remain predominantly negro.
>
> The end result is that neighborhood zoning in Alexandria, Louisiana, leaves the majority of the city's negro students in a virtually segregated school system. *Id.*

The court then set out in detail a plan to remedy the deficiency in eliminating racially identifiable schools, and ordered the district court to implement that plan or one which would achieve the same result. Notably, it was admonished that "[T]he fact that the plan complies with the requirements for a neighborhood system as enunciated by this court in *Ellis v. Board of Public Instruction of Orange County, Florida*, (5 Cir.

1970), 423 F.2d 203, does not make the system constitutionally palatable unless the plan actually works to achieve integration." *Id.*

Following this remand, a geographical plan for Wards 1, 8 and 9 was devised and implemented. The district court retained jurisdiction. In 1973 and 1974, the United States, as intervenor, moved for supplemental relief. It alleged that enrollments projected under the 1971 plan had not been met, and pointed to the continued existence of racially identifiable schools. The 1973 motion resulted in some adjustments and the 1974 motion was suspended "until further orders of [the] court."

Renewal of litigation leading immediately to these appeals began on August 31, 1979, when the private plaintiffs filed a Motion for Supplemental Relief complaining of the persistent spectre of one-race schools. They further alleged non-compliance with the teacher ratio requirements of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5 Cir. 1969), and employment discrimination in the hiring of staff and faculty. The government moved to reschedule hearing on its 1974 motion, contending that the same schools which had been all-black or virtually so in 1974 remained segregated in 1979.

Statistical facts supporting the need for further relief were compelling. At the close of the 1979-80 school year, the board operated thirty elementary, seven junior high, and twelve high schools. These were attended by 24,622 pupils, of whom 8,793 (35.7 percent) were black and 15,829 (67.3 percent) were white[1]. 76 percent of the pupils attended school in Alexandria, or in the adjacent communities of Pineville and Tioga in Wards 9 and 10. 74 percent of all black pupils attended Alexandria schools where they constituted a majority

[1] These figures omit the number of pupils attending three special purpose facilities which are not involved in the plan.

of 56 percent. A comparison of enrollment figures for 1965 when the schools were officially segregated with those for 1980 reveals that almost no progress was made in ten schools, nine in Alexandria and one in the Ward 3 community of Cheneyville.[2]

The matter was heard on April 29 and 30, 1980. The government presented testimony on the continued existence of one-race schools and the plaintiffs' employment discrimination claims. It proposed a plan prepared by its expert, Dr. Gordon Foster, which utilized clustering and pairing to abolish one-race schools in Wards 1, 8, and 9. The plaintiffs endorsed this plan, and called for desegregation of other racially identifiable schools. They offered no plan of their own. The school board stated its opposition to the government plan, maintaining that the system was unitary. It offered no plan.

On June 6, the district court issued a short preliminary opinion, stating:

> It is conceded that there are a number of racially identifiable schools in the Rapides Parish School System. We find from the record that the existence of all of the racially identifiable schools has not been justified as contemplated under *Swann v. Charlotte-Mecklenburg Bd.*

2

	1965 ENROLLMENT % of Black Pupils	1980 ENROLLMENT % of Black Pupils
ALEXANDRIA		
Aaron Elementary	100	100
Acadian Elementary	1	100
Lincoln Road Elementary	100	99
Lincoln Road Primary		97.7
Peabody Elementary	99.7	100
Silver City Elementary	100	100
South Alexandria Elementary	100	99.5
South Alexandria Primary	100	100
Jones Street Junior High	100	93.9
WARD 3		
Lincoln Williams Elementary	100	92.9

of Education, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); and that the Rapides Parish School System is not unitary and that additional relief must be granted. *Lee v. Macon City Bd. of Education*, [616] F.2d [805] (5 Cir. 1980).

The court rejected the Foster plan, criticizing it on the ground that it failed to cover the Alexandria metropolitan area, much less the entire system. Notice was served that the court would draw its own plan.

That plan was issued on July 3, and the parties were given 15 days to respond with comments or recommendations. After a hearing in the nature of a status conference, the court entered final judgment adopting its plan on August 6, 499 F.Supp. 490 (W.D.La.). The school board was ordered to implement it for the 1980-81 school year, set to commence on August 20.

THE PLAN

The district court opens with a statement of principles. Busing is called "an essential element of our public school systems for many years," which would be used "purposefully and constructively." The court recognized "that neighborhood schools in metropolitan areas should exist but only to the extent that they do not impair or inhibit the establishment of an integrated school system." This recognition was followed by the curious observation that neighborhood schools "do not exist outside of metropolitan areas." The court allowed that it would give "due recognition to physical circumstances and to individual interests," and finally noted that "construction of new school buildings and disposition of old school buildings . . . and sites can substantially affect that development of a unitary system."

The specific remedial orders contained in the plan are aimed at eliminating the Alexandria and Cheneyville one-

race schools. Thus, attendance is realigned in the two separate areas, with one school involved in the desegregation of both. Mandatory pupil reassignment orders are coupled with a majority-to-minority transfer provision.

Desegregation of the eight Alexandria area elementary schools bearing a racial stigma was accomplished by clustering all elementary schools in Wards 1, 8, 9, and 10 into four groups, each containing two of the schools. Four of the facilities, South Alexandria Elementary, Lincoln Road Elementary, Peabody Elementary, and Acadian Elementary, one in each cluster, became sixth grade centers to be attended by all sixth graders within each cluster. The plan additionally required the transfer of sixth grade pupils from the Ruby Wise School in Ward 10 to South Alexandria Elementary. Pupils in grades K-5 from the four new sixth grade schools were reassigned to predominantly white schools in their cluster.

Of the other four racially identifiable elementary schools, Aaron Elementary was closed, and South Alexandria Primary, Lincoln Road Primary, and Silver City, one in each of the three clusters, were slated to serve grades K-2. They were projected to remain primarily black. Pupils in grades 3-5 from these schools were reassigned to primarily white schools in their cluster.

Thus, elementary school desegregation in Alexandria was accomplished by reassignment of pupils within compact geographic zones. The continuing predominance of black pupils at K-2 schools in three of the clusters was justified through reliance on neighborhood school considerations for the very young. The effect of these reassignments is indeed apparent, and appears to have been largely satisfied by actual enrollment figures for fall, 1980.[3]

---

[3] The following shows the impact of the plan on the eight predominantly black elementary schools listed above in note 2.

To desegregate the Jones Street Junior High School in Alexandria, the court rezoned attendance for each of the five junior high schools in Wards 1, 8, 9, and 10, aiming to achieve a minority enrollment of approximately 40%. Additionally, 205 white students from predominantly white schools in Wards 2 and 11 were assigned to Jones Street. The Ward 2 transferees were seventh and eighth grade pupils from the school in Poland, which was reduced to a K-6 facility. 11th Ward transferees included seventh and eighth grade pupils from the town of Buckeye, three of whom would become involved in further orders. An earlier version had closed the junior high school in Tioga, but the court reconsidered and rejected that determination in formulating its final plan. It noted that "[A]though this plan . . . has deficicencies, it is far better than any of the alternatives suggested. It relieves

	Grade	% Black Under Plan Projections	% Black Under Actual Enrollment
(GROUP 1)			
South Alexandria Primary	K-2	99.6	99.3
South Alexandria Elementary	6	44	44.7
(GROUP 2)			
Lincoln Road Primary	K-2	97.8	96.3
Lincoln Road Elementary	6	44.5	43.3
(GROUP 3)			
Silver City	K-2	100	99.8
Peabody	6	39.3	54.4
(GROUP 4)			
Acadian	6	39.8	39.5

The Court's reasoning and the policy considerations used in formulating this portion of the plan were described as follows:

> We determined that better attendance by whites would be assured if schools in the black area became 6th grade schools, each integrated class having attended school together in grades 3, 4 and 5. We were also aware that busing the entire class to a different school in the white area for grades 3, 4 and 5 would accomplish nothing for integration and that both blacks and whites would be better served if the class from the school in the black area were split in three sections with each section attending one school in the white area for a period of three years. Blacks and whites alike would benefit from attending the same school for 3 out of the 4 years during which the class was clustered. It would also reduce the busing of whites. All students, whether clustered or not, attend the 6th grade in one of [illegible] four 6th grade centers in the black area.

Tioga of the inequities of the original and spreads the burden of busing far more evenly in other areas." Enrollment figures reveal that these orders were effective, though attainment of projected totals was somewhat frustrated by "white flight."[4]

The remainder of the court's plan affects schools in the southeastern portion of the parish, in Wards 3, 2, and 4. Before promulgation of the plan the Ward 3 town of Lecompte contained three schools, Lecompte Elementary, Carter Raymond, and Rapides High School. Lecompte Elementary and Carter Raymond each served pupils in grades K-8 under earlier orders. Each school had a majority of black pupils in the range of approximately 60 percent. The Lincoln Williams School in Cheneyville, some 10 miles to the southeast of Lecompte, served all area pupils in grades K-8. The school was, as noted above, approximately 93% black, and is the "spur" for additional relief in this area of the parish. About the same distance to the west of Lecompte is the community of Forest Hill, which contained a K-8 school with a black attendance percentage of only 8.3. High school students from both communities went on to Rapides High School in Lecompte. Northeast of Lecompte in Ward 2 is the community of Poland, which had a K-12 school with 9.6 percent black pupils in attendance.

The plan provided for Lecompte Elementary to become a K-3 facility, and for Carter Raymond to serve grades 4-8. Lincoln Williams was closed, and its K-8 pupils were transferred to the Lecompte schools. Forest Hill was also closed,

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[4] Junior high school reassignments altered the percentage of black pupils attending the five schools as follows:

	% Black 1979-80	Projected % Black 1980-81	% Black Under Actual Enrollment, 1980
Alexandria Jr. High	43.7	42.5	42.7
Brame Jr. High	38.4	40.5	44.3
Jones Street Jr. High	93.3	42.6	52.3
Tioga Jr. High	2.5	40.9	42.8
Pineville Jr. High	13.7	41.9	43.7

with its pupils transferred to Lecompte Elementary and Carter Raymond. Pupils from the Poland School in grades 9-12 were shifted to Rapides High School. The variance between percentages of black attendance at these schools as projected by the district court and under actual 1980 enrollments is distinct.[5]

To summarize the cumulative effect of its plan, the court stated:

> 100% of the black student population in the parish will attend integrated schools for ten of the thirteen years of their education. 90.4% will attend fully integrated public schools for the entire thirteen years of their public education. Any one of the 9.6% may attend integrated schools for the entire thirteen years by exercising his right of transfer under the majority to minority rule. Thus all black students in the metropolitan area may attend integrated public schools for the entire thirteen years of their public education if they wish to do so. 100% of the black students outside the metropolitan area are assigned to integrated schools for the entire thirteen years of their public education.

Aside from pupil reassignments, the court provided that principals of certain named schools be white, and of others, black. It reimposed a 31.5 *Singleton* ratio of faculty and staff, and additionally ordered that in each school "the assistant principal be of the race other than that of the principal of that school." The construction of new schools outside of the

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[5]

	Grade	Projected % of Black Attendance	Actual % Enrolled
Poland Elementary	K-6	47.7	38.8
Lecompte Elementary	K-3	45.3	63.9
Carter Raymond	4-8	47.5	61.9
Rapides High	9-12	41.1	43.7

As the school board notes, the variance reflects the fact that most of the Forest Hill pupils have left the public school system to avoid compliance with the district court's order.

metropolitan areas was forbidden in the absence of express court approval. Finally, in a comment which should have served to warn those contemplating avoidance of the plan, the court stated "we shall use every means possible to assure that students in the system attend only those schools to which they have been assigned."

POST-JUDGMENT PROBLEMS

Vociferous community resistance to the plan surfaced soon after its implementation, both in the southeastern portion of the parish, at Forest Hill, and in the northeastern community of Buckeye. Forest Hill residents had attempted to intervene on August 1, 1980, just before the date of final judgment, to complain of the closing of their school. They urged that previous pleadings and evidence had not given notice that the facility was in jeopardy. Intervention was denied by the district court as untimely.

After the plan was adopted and imposed for the 1980-81 school year, Forest Hill residents "quietly and peaceably" moved onto the closed school grounds and began to teach their children on the premises. The district court had previously issued an injunction against interference by school officials with implementation of the plan, but it does not appear that these residents acted in concert with school officialdom.

The government requested a temporary restraining order barring such use of the school. A hearing was held, after which the district court prohibited the residents from setting foot on the ten-acre school premises, on pain of a fine between $100 and $300 per day. This order was merged into a permanent injunction on September 22.

Matters became even more heated in the northern part of the parish, and centered around efforts of the parents of three former Buckeye students to thwart their transfer to the Jones

Street School. The parents of Michelle LaBorde, Lynda McNeal, and Ramona Carbo sought relief from State District Judge Richard E. Lee of the Ninth Judicial District of Louisiana. They obtained orders awarding "provisional custody" of the girls to families living in the zone of Buckeye attendance.

The district court was apprised of these maneuvers, and wrote a letter to the school superintendent directing him to terminate the girls' enrollment at Buckeye until such time as they had obtained permission to transfer from a court-appointed transfer committee. The principal at Buckeye ordered them to leave the school.

The parents then jointly filed a petition for writ of mandamus and injunctive relief in the state court, docketed as *LaBorde, et al v. Waite* before Judge Lee. The United States District Court for the Western District of Louisiana was named a respondent. On November 3rd, Lee ordered school officials to allow the girls to attend Buckeye, and on November 6th, he temporarily enjoined United States District Judge Nauman Scott from issuing any order or decree "interfering with or tending to interfere with the administration of justice by the Ninth Judicial District Court of Louisiana . . . or the rights, privileges and immunities of petitioners as litigants [before that court]."

On November 6 the United States Department of Justice, as counsel for the United States District Court, filed a petition to remove *LaBorde v. Waite* to federal court. The petition was granted on the same day and Judge Scott vacated Judge Lee's injunctions of the 3rd and 6th.

This action did not deter Judge Lee from issuing injunctions. On November 7, he enjoined Judge Scott from interfering with the attendance of the three children at Buckeye High School, and on November 14 he enjoined school officials from obeying federal court orders. On the same day, Judge

Scott enjoined the parents, guardians, school officials and their attorneys from proceeding further in state court. He scheduled a show-cause hearing to determine why the girls' enrollment at Buckeye should not be terminated.

The hearing was held on December 3. Judge Scott ruled that the girls must attend school in compliance with the August 8 order until such time as permission to transfer was formally obtained, and refused to consider evidence concerning the status of their residence until applications for transfer had been filed. He then terminated their Buckeye enrollment, directed school officials to enroll then at Jones Street, and made permanent his injunction against further state court proceedings.

Once again, Judge Lee was not deterred. On December 4, acting *sua sponte*, he ordered Sheriff Marshall T. Cappel to accompany the girls to the Buckeye school and arrest anyone who attempted to interfere. Such persons were to be brought before him. To avoid a confrontation, school officials allowed the girls to stay in the school, but denied them credit until their assignment status was resolved.

Judge Lee then, on December 5, ordered the superintendent to afford credit to the girls, or, in the alternative, "to show cause why [he] should not be held in contempt of court and fine, jail sentence or both imposed."

The girls, continuing at Buckeye, filed the formal applications demanded by Judge Scott and he set a hearing for December 19. Their counsel waived presentation of evidence, and the United States presented witnesses. Judge Scott found that the sole purpose of the custody proceedings was to evade the August 6 desegregation order. He ordered the principal to terminate the girls' Buckeye enrollment, but allowed him to give them credit for the time they had attended, provided that they enrolled at Jones Street after the Christmas recess.

The parents, guardians, and school officials were advised that a penalty of $500 per day would be assessed against any person who violated these orders. Judge Scott took under advisement the government's motion for an injunction against the sheriff, denied the LaBordes' request for a stay, and vacated the state court orders of December 4 and 5. On December 23, the court filed a written opinion containing this injunction, and on December 29 amended it to include the sheriff. It also dismissed the state court suit which had been removed.

Judge Lee was not finished yet. On January 2, he ordered school officials to enroll the girls at Buckeye, and made them wards of his court to avoid "serious psychological and mental abuse." There followed a series of events which would resemble comic opera were it not for their unfortunate impact on the community. Three state troopers were sent with the girls to class at Buckeye on January 5. They ordered the principal to enroll them. On the same day, Judge Scott issued a temporary restraining order enjoining Louisiana, the state police, "and all persons with notice of this order" from enforcing the state court's orders or interfering with those of the district court issued issued August 6 and December 29. This was served on the Attorney General of Louisiana, the state police, and Judge Lee. On receipt, the state troopers withdrew from Buckeye. The next day, Judge Lee ordered the local constable to accompany the girls and enforce his order. He also withdrew after being apprised of the federal injunction.

Finally, with all state and local law enforcement authorities apparently complying with federal orders, Judge Lee personally escorted the girls to class on January 7, 12, and 13, directing the principal to enroll them on pain of arrest. The principal complied. In the meantime, on January 7, Judge Scott ordered Judge Lee and the girls' parents to show cause

why they should not be found in contempt of the injunctions issued December 29 and January 5.

On January 14, Judge Scott held a hearing on whether to convert his temporary restraining order of January 5 to a permanent injunction. Louisiana stipulated that it was binding on all state officials. The court then made the state and Judge Lee parties, and enjoined them from interfering with its orders and from enforcing any state court's orders in *LaBorde v. Waite*. On the following day, a hearing was held on the show cause order. Judge Scott ruled that the government had presented a compelling prima facie case of contempt, and, after receiving assurances from Judge Lee and the other parties that they would comply with his orders, dismissed the contempt motions without prejudice. The court allowed the girls credit for the fall semester at Buckeye, conditioned upon their enrollment at Jones Street for the fall semester. It required that their transcripts be submitted to the court until they had complied. Since January 14, the girls have neither attended public schools in Rapides Parish nor agreed to enroll in Jones Street.

ISSUES ON APPEAL

Eight separate appeals have reached us from the orders below. The Rapides Parish School Board appeals from the merits of the district court's August 6, 1980, final judgment. It asserts (1) that the school system was unitary in the 1979-81 years, obviating the need for further relief, (2) that if the system was not yet unitary, the remedy imposed improperly exceeded the scope of the violation, and (3) that in any event, the district court erred in ordering immediate implementation of the plan without giving the parties further time to arrive at a proper remedy.

The Forest Hill residents who had attempted to intervene appeal (1) from the denial of the intervention, and (2)

from that portion of the August 6 order which closed the Forest Hill School, characterizing it as outside the scope of relief requested by the original parties. Forest Hill residents further appeal from the injunction which prohibited use of the closed school facility there, contending (1) that they were not in violation of the court's original injunction against official interference, (2) that a prerequisite showing of irreparable harm had not been made, (3) that the injunction exceeded the scope of relief requested, and (4) that it infringed their First Amendment rights to free speech and peaceable assembly.

The remaining appeals arise from the Buckeye furor. The parents of the three girls who attempted to evade Jones Street attendance challenge the injunctions issued by the district court to compel their compliance with its desegregation order. In particular, they maintain the invalidity of district court's retention of the girls' transcripts pending compliance. The Rapides Parish sheriff, Marshall T. Cappel, appeals from the district court order prohibiting his interference with implementation of the desegregation orders. Finally, the State of Louisiana has appealed from those orders of the district court which enjoined the state and its officials from executing state court orders contravening those of the federal court, and argues that the federal court's retention of transcripts pending compliance violates fundamental rights to travel, to change residence, and parental rights to direct the upbringing and education of children.

RESOLUTION

I. The Merits of the Desegregation Order

In its appeal docketed here as No. 80-3722, the Rapides Parish School Board attacks both the district court's finding that supplemental relief was required and certain elements of the plan imposed. The board first contends that the "en-

tire system as constituted prior to the imposition of this plan was unitary." This contention is grounded on three basic assumptions. First, it is assumed that this court, by its last consideration of the case in 1970, held the system to be unitary with the exception of student assignments in Wards 1 and 8, "and possibly 3 and 4." Second, its is assumed that the one-race schools in the Alexandria Wards 1 and 8 area exist "solely because of the residential preference of the students and are not caused by any unconstitutional action by this school board." Third, it is assumed that the 93% black school at Cheneyville in Ward 3 owes its racial character to the unavoidable effect of "white flight" after earlier decrees had paired area schools.

[1, 2] We conclude that the district court correctly applied the appropriate legal standards in finding further relief to be necessary. In its 1970 opinion, *Valley v. Rapides Parish School Board, supra*, this court made no express or implied finding that any portion of the system was unitary; it merely affirmed those portions of the plan appealed from insofar as they did not deal with pupil transfers in the Alexandria wards. *See* 434 F.2d 144 and 145. If the district court later held other areas of the parish unitary under a plan not appealed from, that finding binds neither this court nor the court below. *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), firmly established that the duty to eliminate *all* vestiges of state imposed segregation is *continuing*. A plan which gives promise of establishing a unitary system cannot foreclose further relief if it does not in fact abolish the evidences of segregation. In any case, only time will tell.

We cannot ignore the continued existence of one-race schools in this system. In *Swann*, the Supreme Court stated:

> . . . in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional

> duty warrants a presumption against schools that are substantially disproportionate in their racial composition . . . [T]he court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part. 402 U.S. 1 at 26, 91 S.Ct. 1267 at 1281, 28 L.Ed.2d 544 at 572.

This principle has been consistently applied. *See e.g, Anderson v. County Board of Education*, 609 F.2d 225 (5 Cir. 1980); *United States v. Board of Education of Valdosta*, 576 F.2d 37 (5 Cir. 1978); *Boykins v. Fairfield Board of Education*, 457 F.2d 1091 (5 Cir. 1972).

We must also reject the school board argument that the existence of these schools is justified by demographic facts regarding residential patterns in Alexandria. Only last year, in *Lee v. Macon County Board of Education*, 616 F.2d 805 (5 Cir. 1980), we held that "[N]ot until all vestiges of the dual system are eradicated can demographic changes constitute legal cause for racial imbalances in the schools." 616 F.2d 805 at 810. *See also Valdosta, supra; Flax v. Potts*, 464 F.2d 865 (5 Cir. 1972). As the figures set out in note 2, *supra*, reveal, these schools have never been desegregated. In the same sense, their composition may not be justified by pointing to "white flight" as a permissible causative to continued imbalance. If such a factor renders a plan unworkable, the district court may attempt another solution, but we will not allow desegregation to be thwarted by extra-legal action.

Against this legal backdrop, the maintenance of the all-black schools described *supra* from 1965 through the spring of 1980 is glaring, and clearly requires further relief. We now turn to an examination of the plan drawn by the district court.

The appellant school board contends that if further re-

lief was indeed required, the district court's remedy was excessive. First, the board argues that the plan improperly orders changes in areas of the parish which were not put in issue by motions, and where the schools involved have previously been declared unitary. It is maintained that "[T]he motion of the United States in Wards 1 and 8, and the plan proposed by their expert, under limiting directions from the government, involved only schools in Wards 1, 8, and 9. Although plaintiff's motion orginally rather vaguely referred to all schools in the system, plaintiffs never submitted a plan involving schools in other wards to the court and affirmatively adopted the plan proposed by the government."

Secondly, the board urges that the court erred in failing to accord the same recognition to "neighborhood" or community schools in the rural areas of the parish as it did in the metropolitan zone. It asserts that the holding that no neighborhood schools exist in rural areas was "a fundamental error of fact which led the district court into improperly rearranging the schools, and students, in Cheneyville, Poland, Lecompte, Forest Hill, Ruby Wise, and Buckeye areas, including the closing of Forest Hill."

Finally, the board complains that immediate implementation of the plan prevented the formulation of a proper remedy, and left no time for planning or efforts to convince school patrons that the plan would not adversely affect their children.

Having carefully studied the plan, we are convinced that the district court performed admirably in most respects. It must be remembered that the school board did not propose any plan of its own, and that the private plaintiffs merely adopted a government plan which the court deemed inadequate. Given this level of guidance from the parties, the plan

is a remarkably well-considered response to a difficult set of problems.

[3, 4] The fashioning of relief in a school desegregation case is an exercise of the district court's discretion in creating an equitable remedy as a response to the denial of constitutional rights. Where the local school authorities have failed to remedy past wrongs, the power of the district court is broad. *Swann, supra*, 402 U.S. 1, 15, 91 S.Ct. 1267, 1275, 28 L.Ed.2d 554, 566. "The task is to correct, by a balancing of the individual and collective interests, the condition that offends the Constitution." *Id.*, 402 U.S. 1, 16, 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554, 566. The criterion for determining the validity of provisions in a desegregation plan is whether they are reasonably related to the ultimate objective. *U.S. v. Jefferson County Board of Education*, 372 F.2d 836 (5 Cir. 1966).

[5] In considering these measures, the district court properly viewed the system as a whole, rather than limiting its consideration to the racial imbalances of isolated schools in the system. *Lee v. Macon City Board of Education, supra.* The entire parish operated as a dual, segregated system in the past, and statistics show that the vestiges have not been eradicated "root and branch" as required.

[6] We must reject any contention that the movants below waived a remedy going beyond Alexandria and its immediate environs. The government points out in its brief that it was only logical to concentrate on discussion of problems in Alexandria, where most of the one-race schools were located. At the April hearing, the government expressly reserved its right to seek desegregation outside of Alexandria. The private plaintiffs initially sought desegregation of every racially identifiable school in the parish, and, when they endorsed the Foster plan, renewed their request for a system-wide remedy. It should finally be noted that at the same

hearing, counsel for the school board commented on the Foster plan as follows:

> Why didn't you come prepared to deal with the whole system, is what I don't understand. If you are not able to say now that what you propose will convert us to a unitary school system, why didn't you go ahead and include everything that will convert us to a unitary school system, because that is what you say we have got to do.

[7] We perceive no serious objection to that portion of the plan concerning elementary school pupils in Alexandria. The cluster units are well conceived, and achieve a proper balance between competing cosiderations. Desegregation is achieved within school groupings which do not require long-distance transfer. Further, it is apparent from the fall, 1980 enrollment statistics quoted above that the plan is indeed showing promise of success as intended.

Serious objections are raised, however, to those portions of the plan which are aimed at the desegregation of Alexandria area junior high schools and schools in the southeastern wards of the parish. Not surprisingly, these are the provisions requiring some degree of inter-community pupil transfer. The objections revolve around the importation of junior high school pupils from Wards 2 and 11 into Alexandria, and the closure of rural schools at Forest Hill and Cheneyville. Specific findings were made to justify these orders, and we must determine whether the district court abused its discretion in fashioning the relief complained of.

The appellants contend that the district court erred in failing to accord the same respect to neighborhood schools in rural areas as to those in Alexandria. The comment that there can be no rural neighborhood school is cited as an example of this asserted misconception. We agree that the comment, taken in its absolute context, is clearly erroneous. A re-

view of case law concerning the neighborhood school concept will reveal that it should apply equally to metropolitan and rural facilities.

[8] We have recognized that "[U]sually, in rural and some city school districts where the population is diffused, assignment on a strict neighborhood basis has been sufficient to eliminate discrimination in student assignments." *Cisneros v. Corpus Christi Independent School District*, 467 F.2d 142, 152 (1972). It has consistently been held, however, that if such measures prove inadequate to the task of eradicating all vestiges of a dual school system, "[A] district court may and should consider the use of all available techniques including the restructuring of attendance zones and both contiguous and noncontiguous attendance zones." *Davis v. Board of School Commissioners*, 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577, 581 (1971). We reject any argument that urban and rural facilities within a single school district which operated as a dual system and has not yet achieved unitary status may not, as a matter of law, be paired or clustered together.

[9] In formulating such a plan, it is clear that bus transportation may be utilized. The Supreme Court long ago ruled that there is "no basis for holding that . . . school board authorities may not be required to employ bus transportation as one tool of board desegregation." *Swann, supra*, 402 U.S. 1, 30, 91 S.Ct. 1267, 1283, 28 L.Ed.2d 554, 575. It is also clear that in its formulation of noncontiguous zones, pupil reassignments within them, and transportation to effectuate the reassignments, the district court should take into consideration such equitable factors as "[T]he length and time of travel . . . in light of the age of the children, and the risk to health and probable impingement on the educational process." *Cisneros, supra*, 467 F.2d 142 at 153. These considerations are equally applicable to rural and metropolitan schools.

As to the more intangible values associated with the neighborhood school concept, there should be no urban-rural distinction. We recognize that rural schools may, as the appellants contend, serve the same community function and implicate the same values as those in urban zones. We are told that since the days of the one-room red-brick schoolhouse, life in rural communities has frequently revolved in large measure around the local school, which may be the only cohesive element to cement dispersed residents into a community.[6] This may well be true and such considerations are not without importance. They are, however, even more yielding than practical variables such as proximity when posed against the continuing need to achieve meaningful desegregation. In *Keyes v. School District No. 1, Denver, Colorado*, 521 F.2d 465 (1975), *cert. denied*, 423 U.S. 1066, 96 S.Ct. 806, 46 L.Ed.2d 657 (1975), the Tenth Circuit noted the importance of neighborhood contact in such areas as the playground, extracurricular activity, and parental involvement, but cogently observed that "we cannot place it above the constitutional right of children to attend desegregated schools." 521 F.2d 465 at 478.

[10, 11] Further, we see no reason for a general distinction between urban and rural facilities as regards the closing of schools pursuant to a plan for desegregation. The closing of a facility built and maintained at the expense of local taxpayers is a harsh remedy, which should only be employed if absolutely necessary to achieve the goal of a unitary system after all other reasonable alternatives have been explored. Where a district court adopts such a measure, the inquiry before us is whether the order was an abuse of discretion. *See*

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[6] Certain of the appellants have urged us to hold that there is a fundamental right to maintain a rural society separate and apart from the urban environment; it is said to emanate from fundamental principles "beyond the constitution." While doubtless, the choice of rural residence and lifestyle enjoys the protection of express and implied constitutional guarantees, there is no broad, ephemeral right to a separate rural life which will defeat the otherwise valid orders of a district court in furtherance of the long-recognized constitutional mandate to desegregate.

Ellis v. Board of Public Instruction, 45 F.2d 878, 880 (5 Cir. 1972). The district court must explicitly state its justification for ordering a school closed, in order that we may properly make this determination.

[12] Applying these principles to the order before us, we find those regarding Alexandria Junior High Schools to have been within the bounds of discretion. The unyielding racial character of the Jones Street School was the worst problem confronting the court. Specific findings were made to justify the reassignment of pupils from Wards 2 and 11 to that facility, and it appears that reasonable alternatives were fully explored. Participation of pupils from Buckeye and other areas of Wards 2 and 11 was justified on the following grounds:

> Although this parish first encountered integration problems in 1965, and has had an active history of integration endeavor since that time, the Buckeye schools have shouldered no responsibility. Out of a combined population of 1306 students, 87 are being assigned to Jones Street. They, like all the other students so assigned, are already bused, their buses simply are being turned in another direction. They are the students in each ward that are nearest to Jones Street. We find this alternative to be the most equitable at our disposal.

Intercommunity busing into Alexandria does not begin until the seventh and eighth grades, and involves only 205 pupils under plan projections. We discern no basis for concluding that the district court's comment regarding rural neighborhood schools reflected an improper disregard of equitable consideration in constructing these zones of transfer; rather, it appears that the court properly balanced the relevant competing considerations. We therefore leave undisturbed those portions of the order involving northeastern Rapides Parish.

[13] We cannot lend our sanction so easily, however, to those portions of the plan involving pupils and facilities in

Wards 3 and 4. Here, as we have described, the district court elected to close a predominantly white rural school, Forest Hill, and a predominantly black school, Lincoln Williams, equidistant in different directions from the town of Lecompte, and to transfer their pupils to Lecompte's schools. As far as we can determine, the only justification for closing Lincoln Williams was its predominance of black pupils. The court admitted that Forest Hill is more modern than Lecompte Elementary, but described the later as having "much the better location for purposes of integration," in terms of distance for busing of reassigned pupils. Alternatives are only sparingly mentioned.

These findings are an insufficient factual basis on which to approve the closing of Forest Hill and Lincoln Williams. Equally effective alternatives may exist which would avoid the closing of a modern facility and the intercommunity transfer of kindergarten pupils. These should be explored on remand and, if the district court adheres to is present plan, specific reasons for their rejection should be given. We cannot ignore the district court's disregard of neighborhood considerations for rural schools in this context, particularly where K-2 students in Alexandria were spared transfer to the point that three schools remain virtually all-black. Specific desegregation measures in southeastern Rapides Parish should be reexamined in light of the full range of mitigating equitable considerations.

[14] In passing on objections to the merits of the district court's plan, we are left with the school board's argument that the court's order requiring immediate implementation only days before the fall term was to begin constituted an abuse of discretion. We flatly reject such a contention.

As counsel for the school board are no doubt aware, the Supreme Court has repeatedly and firmly declared that school systems must begin to operate immediately on a unitary basis

and that requests for delay must be viewed in light of the passage of time since the inception of desegregation efforts. "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now." *Green, supra*, 391 U.S. 430, 439, 88 S.Ct. 1689, 1694, 20 L.Ed.2d 716, 724. The operative word is *now*. *See also Wright v. City Council of Emorpia*, 407 U.S. 451, 460, 92 S.Ct. 2196, 2202, 33 L.Ed.2d 51, 60 (1972); *Swann, supra*, 402 U.S. 1, 13, 28 L.Ed.2d 554, 565, 91 S.Ct. 1267, 1275 (1971). *Alexander v. Holmes County Board of Education*, 396 U.S. 19, 20, 90 S.Ct. 29, 24 L.Ed.2d 19, 20 (1969); *Dowell v. Board of Education*, 396 U.S. 269, 270, 90 S.Ct. 415, 416, 24 L.Ed.2d 414, 416 (1969); *Bradley v. School Board*, 382 U.S. 103, 105, 86 S.Ct. 224, 225, 15 L.Ed.2d 187, 189 (1965); *Rogers v. Paul*, 382 U.S. 198, 199, 86 S.Ct. 358, 359, 15 L.Ed.2d 265, 267 (1965).

In the case *sub judice*, sixteen years of litigation have not achieved the goal of a unitary system. Further, we note that the school board did not aid the district court by proposing specific remedial measures, having had the opportunity to do so long before the beginning of the 1980 term. Finally, there has been neither a showing nor even an allegation of harm resulting from the court's implementation order sufficient to underlie a finding that discretion was abused.

II. Intervention by Forest Hill Residents

By the appeal docketed here as No. 80-3855, residents of the town of Forest Hill challenge the denial of their intervention into this suit, attempted after the district court's plan had been originally proposed. The appellants claim entitlement to intervention as a matter of right under Fed.R. Civ.P. 24(a)(2), and assert that permissive intervention was proper under section (b)(2) of that rule. They claim that no notice had been given them from pleadings or proceedings that their school would be affected until after the district court issued

its plan, and assert that no prejudice to other parties would result from their intervention.

[15] These arguments run afoul of a series of cases decided by this court regarding intervention under Rule 24 in desegregation cases. Clearly, the appellants were not entitled to intervene as a matter of right. In *United States v. Perry County Board of Education*, 567 F.2d 277, 279 (5 Cir. 1978), we held for the first time that "parents seeking to intervene [in desegregation cases] must demonstrate an interest in a desegregated school system," and affirmed the district court's denial of intervention on the ground that the movants were attempting to *challenge* elements of the plan. This position was reaffirmed in *Pate v. Dade County School Board*, 588 F.2d 501 (5 Cir. 1979), where it was held that parents opposing facets of a desegregation plan have no right to intervention under Rule 24(a)(2), and that "[T]he parental interest that justifies permissive intervention is an interest in a desegregated school system." 588 F.2d 501 at 503.

[16, 17] Even if we were to assume that the appellants stated a judicially cognizable interest by opposing the desegregation plan, it is clear that the district court did not abuse its discretion by denying the motion. Under our decision in *Hines v. Rapides Parish School Board*, 479 F.2d 762 (5 Cir. 1973), intervention may be denied where existing parties to a lawsuit have advanced the position which intervenors seek to promote, or where the district court has already considered and passed on that matter; here, the school board opposed the closure of the Forest Hill facility, and the district court considered and rejected its argument. Concluding that the denial of intervention was proper, we do not address the apellants' specific arguments with regard to the closing of Forest Hill School.

III. The Injunction Against Use of Forest Hill School

By the appeal docketed as No. 80-3776, residents of For-

est Hill challenge the district court's permanent injunction of September 22, 1980, which prohibited any use of the Forest Hill School grounds. A number of arguments are advanced toward showing the invalidity of this order, as noted *supra*.

We will not, however, discuss those assertions in detail. We realize that the district court was faced with what clearly appears to have been an organized move to thwart its orders when residents began to teach children at the closed facility. An evidentiary hearing was held before the injunction issued, at which Forest Hill parents testified that they had been present at the school, and, with full knowledge of the court's order of closure, deliberately disobeyed it. On the other hand, while action was necessary, the district court was also required to observe the principle that an injunction is to be narrowly tailored to remedy the specific action which gives rise to it. A total prohibition on the use of a modern facility which could serve many community purposes other than the teaching of children seems extremely broad.

In any event, we conclude that it is appropriate for the district court to resolve this dispute, if application for relief from the order is made to it following remand of the cause. The lower court is in a far better position than this tribunal to balance the competing interests involved.

IV. Appeals From the Buckeye Dispute

The remaining appeals[7] are from orders issued by the district court to protect the integrity of its desegregation plan following an attempt by three pupils to enroll in a junior high school other than that contemplated by the plan. Among the most unfortunate occurrences in the long history of school desegregation have been the employment of various

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[7] These are docketed as numbers 80-3968, 81-3008, 81-3013, 81-3033, and 81-3083.

legal devices to thwart realization of the ultimate goal, whether for an entire system or for particular pupils. Here, a novel scheme was hatched with the aid of a state trial judge: the transfer of custody for three girls to residents of a zone which permitted attendance at the school to which they had previously been assigned.

[18] At the outset, we must restate several fundamental propositions which the parents involved and their counsel have chosen to overlook. First, a federal court has the power to root out all vestiges of state-sponsored segregation where school authorities have failed to do so. *Swann, supra.* This broad power undoubtedly includes the authority to rearrange attendance zones and supervise student transfer policies. *Id.* We have held that in the case *sub judice*, the remedial power of the district court was invoked by a finding that this system was not unitary, and we have upheld those portions of the plan involving junior high school attendance zones.

[19, 20] While it has long been held that parents have a right to direct the education of their children, *Pierce v. Society of Sisters*, 268 US. 510, 45 S.Ct. 571, 69 L.Ed 1070 (1925), such a right does not give them the unqualified authority to choose a particular public school. A federal district court's desegregation order will bind the children affected, their parents, and state and local officials. *United States v. Hall*, 472 F.2d 261 (5 Cir. 1972).

[21] We will first take up the district court's order regarding actions by the state court and the litigants before it. We find the district court to have acted properly in removing the state case to federal court, in vacating the state judge's orders afterward, and in the exercise of its jurisdiction and injunctive power as to the state court and litigants.

There is absolutely no ground suggested to us or discernable in the record on which we could find clearly erroneous the district court's conclusion that these custody transfers were a sham intended to avoid the effect of the desegregation orders. Clearly, that is what occurred. One of the witnesses presented by the government at the hearing on this matter was a school bus driver. He testified that Ramona Carbo was picked up at her parents' home on Monday and Thursday mornings, and was returned there on Wednesday and Friday afternoons. This finding alone is sufficient to dispose of the argument that matters of juvenile custody are reserved to the state courts; if the sole purpose of a state judicial order is to thwart the vindication of a federal constitutional guarantee, we will pierce the veil of sham to prevent pretextual disregard of valid remedial orders.

It is also clear that the district court properly exercised its power under 28 U.S.C. § 1442, in removing the state case to federal court where the court was named as a defendant, and that the court had broad power under the All Writs Act, 28 U.S.C. § 1651 to enjoin third parties, *including state courts*, from interfering with its desegregation orders. *See Cooper v. Aaron*, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5 (1958); *United States v. Hall, supra; United States v. State of Texas*, 356 F.Supp. 469 (E.D.Tex. 1972), *aff'd*, 495 F.2d 1250 (5 Cir. 1974).

The district court acted with both dispatch and prudence in fashioning its injunctions against the state court, parents, and pupils involved. After resistance had come to a head and then collapsed, the court did not impose a penalty upon Judge Lee, but accepted a promise to avoid further interference. This was an act of no little tolerance where the state court caused several third parties, most notably school officials, to be faced with conflicting orders from state and federal courts. The district court obviously, in all of these orders, kept in mind the principle that "state policy must give way when it operates to hinder vindication of federal constitutional guar-

antees." *United States v. Scotland Neck City Board of Education,* 407 U.S. 484, 488, 92 S.Ct. 2214, 2216, 33 L.Ed.2d 75, 80 (1972).

Finally, it is noteworthy that the state judge's actions appear to have no basis in Louisiana law. Article 220 of the Louisiana Civil Code, which we are told was the authority for Judge Lee's ruling, is designed to be used primarily as authority for a teacher to discipline students placed under his or her care. We are unable to find any mention of a "provisional custodian" in the context used by Judge Lee under Louisiana statutes or case law. It is further apparent that the state judge either ignored or was ignorant of the holding of the Louisiana Supreme Court in *Swope v. St. Mary's Parish School Board,* 256 La. 1110, 241 So.2d 238 (1970):

> Our Court system should not be used as an instrument to circumvent orders and decrees of a Federal Court in a controversy in which the latter has already asserted its jurisdiction. Any other course, if pursued regularly, will set the State and Federal Courts into continuous and chaotic conflict; and it will place litigants as well as the District Judges of this State in an obviously untenable, if not impossible, position, such as would result in the present case if we were to order the [State] District Judge herein (and ultimately the defendants) to defy the presently existing orders of the Federal Court. 241 So.2d 238 at 242.

As Judge Lee flagrantly disobeyed the orders of a federal court issued within the bounds of jurisdiction and discretion, ignored the distinct contours of federal and state jurisdiction, disregarded the clear command of his own State Supreme Court, and blatantly overstepped his judicial role as mediator, choosing instead to act as advocate for a politically popular position, it is not at all strange that he wound up as a leader without troops, standing ineffectually at the school house door.

[22] The injunctions lodged against the Rapides Parish sheriff and the State of Louisiana must also be affirmed. As

we have noted, the decision of the Supreme Court in *Cooper v. Aaron, supra*, renders it clear that state officials are bound through the supremacy clause of a federal court's desegregation order, regardless of whether they acted in good faith or pursuant to a nondiscretionary duty.

[23, 24] Of all of the orders issued by the district court during this period, only one requires correction on remand. Insofar as the court's order retaining the girls' transcripts pending enrollment in compliance with the plan operates to restrain them from choosing to attend a private school, it must fail. In *Pierce v. Society of Sisters, supra*, the Supreme Court established the existence of a right to attend non-public schools as a concomitant of "the liberty of parents and guardians to direct the upbringing and education of children under their control." 268 U.S. 510, 534-35, 45 S.Ct. 571, 573, 69 L.Ed.2d 1070, 1078. The retention of transcripts could also be viewed as an impermissible restraint on the constitutional right to travel, if a decision were made to send the girls to schools outside of Rapides Parish. If these three pupils choose to attend Rapides Parish public schools, they may be ordered to attend that school assigned them under the plan and their transcripts may be withheld until compliance, within the discretion of the district court. No such action, however, may be taken to compel their attendance at public schools, and no penalty may be attached to a decision not to do so.

CONCLUSION

Thus is concluded another chapter in the history of Rapides Parish desegregation litigation. On the whole, the history is a story of both tragedy and hope. Tragedy lies in the fact that sixteen years have not been sufficient to eradicate the vestiges of segregation, and that after the passage of so many years, certain elements of the community, including a member of the state judiciary, are evidently willing to hinder the task and are unwilling to bear any sacrifice. Hope lies in

the real possibility that the plan instituted by the district court in 1980, together with whatever modifications the district court may implement on remand, will finally result in the establishment of a unitary system.

Several important lessons may be learned from the course of this litigation to the present. One is that resistance will be perpetually fruitless. The remedies afforded by the law to those who feel aggrieved by their burden under a desegregation plan are a request for reconsideration by the district court and appeal if it is refused. Defiance is the worst possible course, for the second lesson is that such efforts along with more subtle attempts to thwart the progress of desegregation will only prolong the process and possibly increase the burdens on all involved. Federal courts with continuing jurisdiction over desegregation efforts will not ignore the task entrusted to them by the Constitution and laws.

If all parties and affected persons will work together in good faith, progress toward a unitary system can be smooth and speedy. If maximum input and guidance are given a district court engaged in the formulation of relief, the plan emerging will necessarily be more equitable than one devised in an atmosphere devoid of cooperation. What all parties to this suit should bear in mind, is that when a unitary system is achieved, litigation will end and full attention may be returned to the business of educating children in the best way possible. The words used by the Supreme Court to conclude its opinion in the *Swann* case are instructive:

> At some point, these school authorities and others like them should have achieved full compliance with this Court's decision in Brown I. The systems would then be "unitary" in the sense required by decisions in *Green* and *Alexander*.
>
> It does not follow that the communities served by such systems will remain demographically stable, for in

a growing, mobile society, few will do so. Neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system. This does not mean that federal courts are without power to deal with future problems; but in the absence of a showing that either the school authorities or some other agency of the state has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further intervention by a district court should not be necessary. 401 U.S. 1, 32, 91 S.Ct. 1267, 1284, 28 L.Ed.2d 554, 575-78.

The judgment of the district court is affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. The plan imposed by the district court will remain in full force until such times as it may be amended below.

AFFIRMED IN PART and REVERSED IN PART; REMANDED.

APPENDIX B

VALLEY v. RAPIDES PARISH SCHOOL BD.

Virgie Lee VALLEY, et al.,
Plaintiff-Appellee,

United States of America,
Intervenor-Appellee,

v.

RAPIDES PARISH SCHOOL BOARD,
et al., Defendants-Appellants.

No. 80-3722.

United States Court of Appeals,
Fifth Circuit.

Aug. 14, 1981.

On motion for supplemental relief in school desegregation case, the United States District Court for the Western District of Louisiana, 499 F.Supp. 490, Nauman S. Scott, Chief Judge, adopted a school integration plan. Appeals were taken and consolidated. On original hearing, the Court of Appeals, 646 F.2d 925, affirmed in part, reversed in part and remanded. The Parish School Board filed a motion for rehearing. The Court of Appeals held that remand was necessary to determine whether the district court's order providing for designation of faculty and other staff amounted to a system-wide racial hiring quota, or whether the challenged provisions related only to assignment, not hiring, and validly restated the requirement that the ratio of black and white staff in each school approximate the ratio in the parish as a whole.

Remanded.

Appeal from the United States District Court for the Western District of Louisiana.

ON PETITION FOR REHEARING

Before COLEMAN, GARZA and SAM D. JOHNSON, Circuit Judges.

PER CURIAM::

On motion for rehearing the appellant Rapides Parish School Board raises a single issue concerning the following provision of the district court's order:

> "3. *Designation of Faculty and Other Staff.* The *Singleton* ratio of faculty and staff (31.5) as stated in our previous decrees is confirmed and shall be maintained. More specifically, the ratio of black principals shall be filled by priority at the beginning of each school year unless waived by special order of this Court. It has come to our attention that the ratio is one short, so that the first principal now to be appointed must be black.
>
> The current policy that a minority assistant principal must be appointed as soon as the number of minority students in a school reaches 20%, is now rescinded. This policy, though helpful in the past, has resulted in over-staffing in some instances, and under the plan now adopted, is no longer necessary. It is now ordered that in each school the assistant principal be of the race other than that of the principal of that school."

The Board maintains that the court below has enforced this provision as a system-wide racial hiring quota, in contravention of *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (5 Cir. 1969), and its progeny. *See also Carter v. West Feliciana Parish School Board*, 432 F.2d 875 (5 Cir. 1970); *George v. Davis*, 365 F.Supp. 446 (M.D.La. 1973) aff'd, 493 F.2d 663 (5 Cir. 1974). The United States, intervenor-appellee, has argued that the challenged provisions relate only to *assignment*, not hiring, and that they validly restate the *Singleton* requirement that the ratio of black and white staff in each school approximate the ratio in the parish as a whole.

In our opinion on the merits of this case, reported at 646 F.2d 925 (5 Cir. 1981), we affirm all portions of the district court's order which were not reversed, and we did not specifically address this issue. We do not have a record before us sufficient to show how the provision complained of has been enforced and we therefore instruct the district court to reexamine this matter on remand, in light of the authority cited.

SO ORDERED.

APPENDIX C

In the United States District Court for the
Western District of Louisiana
Alexandria Division

Virgie Lee Valley, et al

vs.

Rapides Parish School Board

Civil Action
No. 10,946

FINAL JUDGMENT

This matter having come on for a final hearing and trial pursuant to motions for additional relief filed by plaintiffs and the intervenor, hearing having been had, the evidence adduced, the plans and authorities subitted having been considered by us, the law and evidence being in favor thereof, it is

ORDERED, ADJUDGED AND DECREED that the plan attached (Exhibit A) be and it is hereby adopted; it is further

ORDERED, ADJUDGED AND DECREED that the defendant, Rapides Parish School Board, implement and make effective the plan (Exhibit A) at the commencement of the 1980-81 school year; it is further

ORDERED, ADJUDGED AND DECREED that plaintiff's demand regarding job discrimination against blacks be and it is hereby denied.

Plaintiffs' demands for attorney's fees are reserved for

further consideration and all costs to date are to be paid by the defendants.

Alexandria, Louisiana, this the 6th day of August, 1980.

s/NAUMAN S. SCOTT
United States District Court

OPINION

This suit to integrate the public-school system of Rapides Parish, Louisiana has been on trial since March 23, 1965. It is before us now on motions by the plaintiff and by the Government (intervenor) for additional relief. This school system is operating presently under our decree dated July 9, 1971, as amended. The decree was agreed to by plaintiffs and defendant. The Government took no appeal.

The issue presented by the motions is whether a unitary system ever was achieved. In our preliminary judgment of June 6, 1980 we recognized that the system was not unitary; that the plan of the Government's expert, Dr. Gordon Foster, was not acceptable and was rejected; that a suggested plan would be drawn by the Court, and that the filling of vacancies in the office of principal at several schools was enjoined pending further orders of the Court. Our suggested plan was filed on July 3, 1980, and comments and alternatives received. A suggested alternative to our original junior high school plan was filed and published on July 30, 1980. The hearing scheduled for August 1, 1980 was converted to a status conference since no additional evidence was offered.

We have considered all of the alternatives to our original plan as well as the response and comments of the parties and others. Based on this consideration we adopt the following:

PLAN

The expertise of the undersigned consists of almost ten years experience as a Federal District Judge in an area not unfamiliar with the problems of school desegregation. The guidelines utilized are the product of this experience.

I. PREPARATION

The scope of the evidence in the case presented at the hearing beginning April 29, 1980 was limited to that part of the Rapides Parish School system located in Wards 1, 8 and 9 which comprised substantially less than the total Alexandria-Pineville metropolitan area. We have informed the parties that we consider the dimension of the matters at issue to be system-wide. Since the evidence did not contain information sufficient to evaluate the system outside Wards 1, 8 and 9 and since the data on those three wards was incomplete (pupil locator maps, etc.) we have utilized the services of Superintendent Townsend (white), and Assistant Superintendent Davis (black) to assemble and submit information as it was requested by us. This data can be identified as Court Exhibits 1-20. Court Exhibit 1 was requested by us from the Alexandria Daily *Town Talk*.

II. GUIDELINES

There is one all-encompassing purpose: the adoption of a plan which achieves the greatest amount of integration with a reasonably assured prospect of success. Our use of all guidelines set out below will be governed by their contribution to this essential purpose. When they fail to contribute they will be discarded.

1. **Busing.** Busing has been an essential element of our

public school systems for many years. A parent will accept extensive busing to achieve an objective which he approves. He will protest busing for purposes which he disapproves even though the distance be short. Hence, it is not the busing itself but the specific purpose which he approves or disapproves. The plan will utilize busing purposefully and constructively. Busing must be racially non-discriminatory.

2. **Neighborhood Schools.** We recognize that neighborhood schools in metropolitan areas should exist but only to the extent that they do not impair or inhibit the establishment of an integrated school system. They do not exist outside metropolitan areas. We recognize also that the neighborhood concept is fundamental and most important in the early years of school and that it becomes progressively less important as the pupils become more sophisticated in the later years of elementary school and in junior high school and high school. We shall recognize the neighborhood concept but only to the degree that it does not hinder or inhibit the establishment of a unitary system.

3. **Practicality.** We shall use all tools lawfully available for our purposes. We shall not adopt measures which are lawful, but have no reasonable prospect of success. We shall give due recognition to physical circumstance and to individual interests as they exist which can exert a substantial impact on our prospects of success, and design remedies which will accommodate, where possible, such circumstances and individual interests.

Although we shall carefully balance the equities between the black and white communities, this is not an end within itself and must give way if it constitutes a substantial obstruction to the successful implementation of the plan.

4. **School Construction.** Construction of new school

buildings, disposition of old school buildings and school sites can substantially affect the development of a unitary system.

III. SPECIFIC PROPOSALS

Although revision of pupil assignments was the principal additional relief requested we have restated other elements of the plan which have been established in plans previously approved in these proceedings.

1. **Pupil Assignment.** At the close of the 1979-80 school year Rapides Parish Public Schools were attended by 25,049 students, 8,942 of whom were black and 16,107 white. This figure includes the enrollment of three schools which are not properly part of the integration plan. Kelso-Twin Cities is an alternative school having a total enrollment of 126 students—36 black and 90 white. Lakeside Elementary is a school for trainable mentally retarded children having 92 black and 61 white. St. Mary's is a Catholic institution for mentally retarded children to which the Rapides system contributes a total of 148 students—21 black and 127 white.

PUPIL MEMBERSHIP AS OF MAY 31, 1980

SCHOOLS	PUPILS			TOTALS
	B	%	W	
Aaron Elementary	279	(100.00)	0	279
Acadian Elementary	273	(100.00)	0	273
Alexandria Junior High	256	(43.7)	329	585
Alexandria Senior High	409	(33.2)	820	1229
Barron Elementary	8	(1.5)	523	531
Bolton High	429	(43.4)	559	988
Boyce Elementary	195	(40.8)	283	478
Brame Junior High	309	(38.4)	496	805
Brasher Elementary	176	(43.0)	234	410
Buckeye Elementary	0		602	602
Buckeye High	0		704	704
Cherokee Elementary	53	(12.0)	385	438
Forest Hill Elementary	26	(8.3)	285	311
Glenmora Elementary	60	(21.4)	220	280

(Over)

PUPIL MEMBERSHIP AS OF MAY 31, 1980 (Continued)

SCHOOLS	PUPILS			TOTALS
	B	%	W	
Glenmora High	69	(27.0)	186	255
Mary Goff Elementary	35	(5.0)	669	704
Horseshoe Drive Elementary	130	(33.8)	254	384
Huddle Elementary	175	(44.6)	217	392
Jones Street Junior High	779	(93.9)	56	835
Kelso-Twin Cities	36	(28.5)	90	126
Lakeside Elementary	92	(60.1)	61	153
Lecompte Elementary	230	(61.5)	144	374
Lincoln Road Elementary	274	(99.0)	3	277
Lincoln Road Primary	209	(97.7)	5	214
Martin Park Elementary	125	(27.0)	339	464
Lessie Moore Elementary	108	(28.0)	279	387
Nachman Elementary	74	(17.0)	362	436
N. Bayou Rapides	108	(24.7)	329	437
Oak Hill High	4	(.3)	1004	1008
Paradise Elementary	11	(1.5)	687	698
Peabody Elementary	375	(100.00)	0	375
Peabody Magnet	628	(65.6)	329	957
Pineville Elementary	50	(10.6)	419	469
Pineville High	189	(17.8)	868	1057
Pineville Junior High	81	(13.7)	508	589
Plainview High	0		357	357
Poland High	30	(9.6)	281	311
Rapides High	138	(44.2)	174	312
Carter Raymond Junior High	218	(62.1)	133	351
Reed Avenue Elementary	195	(75.8)	62	257
Rosenthal Elementary	154	(49.4)	158	312
Ruby-Wise Junior High	11	(3.6)	294	305
Rugg Elementary	105	(35.6)	190	295
St. Mary's	21		127	148
Silver City Elementary	423	(100.00)	0	423
Slocum Elementary	117	(33.0)	238	355
South Alexandria Elementary	414	(99.5)	2	416
South Alexandria Primary	249	(99.6)	1	250
Tioga High	240	(23.6)	775	1015
Tioga Junior High	13	(1.4)	872	885
Wettermark High	174	(49.1)	180	354
Lincoln Williams Elementary	185	(92.9)	14	199
TOTALS	8,942		16,107	25,049

Total enrollment of the system, after subtracting those students attending Kelso-Twin Cities, Lakeside and St. Mary's is

24,622 students—8,793 (35.7%) black, and 15,829 (67.3%) white.

The tables immediately below demonstrate that integration of the black student population in Alexandria has no reasonable prospect of success (it is overwhelmingly black) unless the entire metropolitan area of Alexandria-Pineville-Tioga and Ball is incorporated into the plan.

The evidence establishes that there is no concentration of white students available in the Cheneyville area to integrate Lincoln Williams Elementary (92.9% black). Consequently Lincoln Williams (K-8) must be closed and its student body must be assigned to other schools in the Lecompte area.

	B		W		TOTAL
Alexandria					
Elementary	3,791	(59.9%)	2,541	(40.1%)	6,332
Junior High	1,344	(60.4%)	881	(39.6%)	2,225
High	1.466	(46.2%)	1,708	(53.8%)	3,174
TOTALS	6,601	(56.3%)	5,130	(43.7%)	11,731
Pineville-Tioga					
Elementary	339	(8.8%)	3,503	(91.1%)	3,842
Junior High	95	(8.8%)	986	(91.2%)	1,081
High	429	(20.7%)	1,643	(79.3%)	2,072
TOTALS	863	(12.3%)	6,132	(87.7%)	6,995
Lecompte Area					
Elementary	468	(45.5%)	561	(54.5%)	1,029
Junior High	142	(47.0%)	160	(53.0%)	302
High	217	(41.2%)	310	(58.8%)	527
TOTALS	827	(45.5%)	1,031	(55.5%)	1,858

We have previously declared our intention to resolve the student assignment problems of the entire parish. The two areas discussed above are the only remaining problem areas. The schools in all other parts of the parish have been successfully integrated and where racially identifiable schools remain, their

existence is easily justified. Consequently, the following plan is proposed for student assignment in the metropolitan and the Lecompte areas:

	1979-80			1980-81		
	W	B		W	B	T
GROUP I						
S. Alexandria Primary (K-2)	1	249	(99.6%)	1	297	(99.6%)	298
Nachman Elementary (K-5)	362	74	(17%)	315	162	(33.9%)	477
Rugg Elementary (K-5)	190	105	(35.6%)	171	93	(35.2%)	264
Huddle Elementary (K-5)	217	175	(44.6%)	193	132	(40.6%)	325
Rosenthal Elementary (K-5)	158	154	(49.4%)	163	104	(38.9%)	267
Lessie Moore Elementary (K-5)	279	108	(28%)	234	155	(39.8%)	389
Ruby-Wise Elementary (K-5)	294	11	(3.6%)	221	110	(33.2%)	331
S. Alexandria Elementary (6)	2	414	(99.5%)	189	148	(44%)	338
GROUP II							
Lincoln Road Primary (K-2)	5	209	(97.7%)	5	226	(97.8%)	231
Martin Park Elementary (K-5)	339	125	(27%)	297	173	(36.8%)	470
Horseshoe Drive Elementary (K-5)	254	130	(33.8%)	217	140	(39.2%)	357
North Bayou Rapides (K-5)	329	108	(24.7%)	218	169	(43.7%)	387
Brasher Elementary (K-5)	234	176	(43%)	199	156	(43.9%)	355
Cherokee Elementary (K-5)	385	53	(12%)	325	170	(34.3%)	495
Lincoln Road Elementary (6)	3	274	(99%)	202	162	(44.5%)	364
GROUP III							
Silver City Primary (K-2)	0	423	(100%)	0	323	(100%)	323
Mary Goff Elementary (K-5)	669	35	(5%)	469	180	(27.7%)	649
Paradise Elementary (K-5)	687	11	(1.5%)	399	108	(21.3%)	507
Pardue Road Elementary (K-5)				435	234	(35%)	669
Ball Elementary (K-5)				481	119	(19.8%)	600
Peabody Elementary (6)	0	375	(100%)	245	159	(39.3%)	404

	1979-80		1980-81		
	W	B	W	B	T
GROUP IV					
Pineville Elementary (K-5)	419	50 (10.6%)	370	139 (27.3%)	509
Barron Elementary (K-5)	523	8 (1.5%)	447	131 (22.7%)	578
Slocum Elementary (K-5)	238	117 (33%)	210	149 (41.5%)	359
Reed Avenue Elementary (K-5)	62	195 (75.8%)	111	104 (48.4%)	215
Acadian Elementary (6)	0	273 (100%)	172	114 (39.8%)	286
		1979-80		1980-81	
GROUP V					
Poland Elementary (K-6)	281	30 (9.6%)	150	137 (47.7%)	287
Lecompte Elementary (K-3)	144	230 (61.5%)	223	185 (45.3%)	408
C. Raymond Jr. High (4-8)	133	218 (62.1%)	282	256 (47.5%)	538
Rapides High (9-12)	174	138 (44.2%)	310	217 (41.1%)	527
GROUP VI					
Alexandria Jr. High (7-8)	329	256 (43.7%)	389	288 (42.5%)	677
Brame Jr. High (7-8)	496	309 (38.4%)	497	339 (40.5%)	836
Jones Street Jr. High (7-8)	56	779 (93.3%)	422	313 (42.6%)	735
Tioga Jr. High (7-8)	425	11 (2.5%)	342	237 (40.9%)	579
Pineville Jr. High (7-8)	508	81 (13.7%)	364	262 (41.9%)	626

NOTE: It is also part of the plan that white principals be appointed by defendant School Board at Acadian, Lincoln Road, Peabody and South Alexandria elementary schools and Jones Street Junior High School and that black principals be appointed at Ball, Mary Goff, Lessie Moore elementary schools and at Pineville Junior High School.

Note: See Appendix "A" for description of school zones.

This plan achieves our sole purpose, the greatest amount of integration with a reasonably assured prospect of success:

a. We have utilized our equitable tools to the fullest extent.

b. Dr. Foster's rejected plan described 21 elementary schools in the metropolitan area. Of these, 18 had a black population in excess of 48.7%. Twelve were majority black. It is our experience that racially identifiable schools located in

underprivileged (black) portions of the metropolitan area have no reasonable prospect of successful integration with student ratios shown in the Foster plan. Much of this was induced by limitations placed on Dr. Foster. By comparison, the prospects for successful integration under this plan are dramatic.

c. 100% of the black student population in the parish will attend integrated school for ten of the thirteen years of their education. 90.4% will attend fully integrated public schools for the entire thirteen years of their public education. Any one of the 9.6% may attend integrated schools for the entire thirteen years by exercising his right of transfer under the majority to minority rule. Thus all black students in the metropolitan area may attend integrated public schools for the entire thirteen years of their public education if they wish to do so. 100% of the black students outside the metropolitan area are assigned to integrated schools for the entire thirteen years of their public education.

d. The method used to integrate the elementary schools in Groups I-IV is generally the same. In Group I, for instance, grades 3-5 in Nachman, Rugg, Cherokee and South Alexandria Elementary were clustered. Thus each school would ordinarily become a one-class school with students from all schools in one class attending one school, and the entire class (from all four schools) bused to a different school each year. We determined that better attendance by whites would be assured if schools in the black area became 6th grade schools, each integrated class having attended school together in grades 3, 4 and 5. We were also aware that busing the entire class to a different school in the white area for grades 3, 4 and 5 would accomplish nothing for integration and that both blacks and whites would be better served if the class from the school in the black area were split in three sections with each section attending one school in the white area for a period of three years. Blacks and whites alike would benefit from attending the same school for 3 out of the 4 years during which the class

was clustered. It would also reduce the busing of whites. All students, whether clustered or not, attend the 6th grade in one of the four 6th grade centers in the black area.

e. Neither the plaintiff nor the government has objected to the proposed student assignment plan except as follows:

The plaintiff has reurged the pairing alternative suggested in the August 25, 1970 decree of the Court of Appeals. However, plaintiff has submitted no evidence, no authorities in support of this alternative. We have examined this plan. It is fragmentary, out of date, and uses schools which no longer exist. It is incomplete and deficient in that it does not mention the following elementary schools: Acadian, Silver City, Aaron Street, Horseshoe, Cherokee, Nachman, Huddle, Brasher, North Bayou Rapides or any of the schools in Pineville or Tioga. We reject this alternative.

The Government objects to the transfer of black students in grades 1 and 2 from Acadian, Peabody, and Aaron to Silver City and Lincoln Road Primary. We have adopted, reluctantly, the Government's suggestion that these students be transferred to majority white schools because this transfer will increase materially the ratio of black students in Wards 9 and 10.

We have adopted the Government's suggestion that the Ruby-Wise 6th grade be sent to one of the 6th grade centers, but have rejected the Government's suggestion that Ruby-Wise grades 1-5 be paired with Reed Avenue. Although the present ratio of Reed (75.8% black) must be relieved, we are opposed to the pairing with Ruby-Wise if any other viable alternative will serve. Such pairing will render the role of Ruby-Wise far more burdensome than any of the other elementary schools north of Red River.

In lieu of the pairing suggested, we converted Reed into a majority white (48.4% black) school. To accomplish this

we assigned Old Karst Park No. 1 to Ruby-Wise. These students previously were being bused to Reed and Rosenthal. We assigned to Reed students (white) from the area lying between Highway 1 and the river north of the present Reed Zone. In addition we assigned to Rosenthal that portion of the present Reed Zone lying east of Monroe Street.

f. All of the objections made by the Board have received our serious consideration. Those alternatives relating to grades 6-8 in the metropolitan area are unacceptable for one of two reasons. Either they abolish Jones Street as a junior high school or they utilize some schools for special purposes. Both alternatives are unfair to the black community.

However, the suggested alternatives for Group V have compelled changes in our original plan. We are impressed by and have given very careful consideration only to those objections pertaining to the closure of Lincoln Williams (Cheneyville), Poland and Forest Hill. We have now decided that the campus of Carter Raymond (Lecompte) is insufficient to accommodate the student population previously assigned it. We determined that Poland should be reopened for grades K-6, assigned to it those same grades in Lincoln Williams. This brought a heavy black ratio to Poland which we reduced by allowing a number of Lincoln Williams students (64 blacks and 12 whites) to remain at the Lecompte Elementary Schools. Poland grades 7 and 8 will attend Jones Street and Poland grades 9-12 will attend Rapides High.

We rejected the suggestion that Lecompte Elementary be closed and replaced by Forest Hill. Although the Forest Hill plant is more modern, Lecompte Elementary is very well maintained, and a very adequate educational facility. It has much the better location for the purposes of integration. Forest Hill draws the bulk of its population from the area between Forest Hill and Lecompte. They bus almost as far to go to Forest Hill as they would to Lecompte. Woodworth students have bused voluntarily to Lecompte for many years and their bus

routes are much more arduous than those from Forest Hill will be. For these and other reasons Forest Hill should remain closed.

g. As we informed all persons who have conferred with us since the publication of our original plan, we were not satisfied with the alternative (closing Tioga Junior High) or any of our other alternatives regarding junior high schools. We have considered all of the many alternatives submitted. Some of them, as we have stated previously, closed Jones Street as a junior high school, others involved one grade schools, or the substitution of special purpose schools in the black area in lieu of general purpose schools. Our original plan had the very objectionable feature of closing Tioga Junior High School, making the role of that single community far more burdensome than the other junior high schools in the metropolitan area. Consequently, we have adopted our own alternative published July 30, 1980. Although this plan also has deficiencies, it is far better than any of the alternatives suggested. It relieves Tioga of the inequities of the original and spreads the burden of busing far more evenly in other areas.

It should also be noted that Jones Street Junior High School would have a total population of 735 students, 313 (42.6%) of whom are black. The population assigned to Jones Street Junior High is drawn from the following areas:

WARD 1:	Jones Street Area (Zone A)	313
WARD 9:	Down-Town Pineville (Zone D)	53
	Holiday Park Area (Zone C)	47
WARD 10:	Kingsville Area (Zone G)	83
	Village Green (Zone C)	34
WARD 11:	Libuse to Holloway (Zone B)	87
	Lake Hills (Zone C)	12
	Ruby-Wise (Zone F)	53
WARD 2:	Poland (Zone E)	53

Although this parish first encountered integration problems in 1965, and has had an active history of integration endeavor since that time, the Buckeye schools have shouldered no responsibility. Out of a combined population of 1,306 students, 87 are being assigned to Jones Street. They, like all the other students so assigned, are already bused; their buses simply are being turned in another direction. They are the students in each ward that are nearest to Jones Street. We find this alternative to be the most equitable at our disposal.

h. The record discloses that all high schools in the metropolitan area are well integrated. The intervenor complains that the attendance figures in Peabody Magnet School are misleading because many of the white students, because of courses requiring them to spend a substantial amount of time off-campus in offices and shops, are not full-time students. The school system has lost many white students in the past through unsuccessful efforts to integrate Peabody High School by student assignment. Any method of clustering or pairing is educationally destructive and would jeopardize progress at the other high schools which are well integrated. The alleged deficiencies can be remedied by additional effort within the magnet school concept. The School Board cannot effectively begin this task while implementing the balance of this plan prior to the commencement of the 1980-81 school year. Appropriate plans and recommendations should be submitted by the School Board prior to January 1, 1981.

A committee to commence these activities will be appointed, after consultation with the Board, on or before October 1, 1980.

Mr. Eugene Millet has just been appointed assistant superintendent for instruction. We intend to appoint him chairman of the committee. As a member of the staff, and as a specialist, he is uniquely qualified to act. Other members of the com-

mittee will be appointed after we have consulted Mr. Millet. Annual progress reports will be submitted by the committee.

None of the parties has opposed this plan.

i. In order to make the plan more acceptable to blacks and whites alike it is required that the principals in Ball, Mary Goff and Lessie Moore Elementary Schools and Pineville Junior High School be black and that the principals in South Alexandria, Lincoln Road, Peabody and Acadian Elementary be white. This policy shall be maintained unless waived by special order of this Court.

2. **School Construction.** The construction of new schools in outlying portions of the metropolitan area hinders and inhibits integration. No school site shall be selected, no school construction begun, no school facility disposed of (including leased) and no school facilities shall be enlarged (by portable classrooms or otherwise) without the express approval of this Court.

3. **Designation of Faculty and Other Staff.** The *Singleton* ratio of faculty and staff (31.5) as stated in our previous decrees is confirmed and shall be maintained. More specifically, the ratio of black principals shall be filled by priority at the beginning of each school year unless waived by special order of this Court. It has come to our attention that the ratio is one short, so that the first principal now to be appointed must be black.

The current policy that a minority assistant principal must be appointed as soon as the number of minority students in a school reaches 20%, is now rescinded. This policy, though helpful in the past, has resulted in over-staffing in some instances, and under the plan now adopted, is no longer necessary. It is now ordered that in each school the assistant prin-

cipal be of the race other than that of the principal of that school.

4. **Enforcement.** We shall use every means possible to assure that students in the system attend only those schools to which they have been assigned.

5. **Policy.** Policies previously adopted by this Court (Transportation, Majority-to-Minority Rule, etc.) are hereby reaffirmed unless specifically rescinded (Student Assignment) by this plan.

Opposition

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

No. 81-890

In the Supreme Court of the United States

OCTOBER TERM, 1981

RAPIDES PARISH SCHOOL BOARD, ET AL., PETITIONERS

v.

VIRGIE LEE VALLEY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether there has been an "obvious and exceptional showing of error" so as to require setting aside the concurrent findings by two courts that the Rapides Parish School Board has never dismantled its unconstitutionally segregated school system.

2. Whether the scope of the desegregation plan is tailored to the nature of the constitutional violations.

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OPINIONS BELOW

The district court's opinion (Pet. App. A-41 to A-56), which was entered on August 6, 1980, is reported at 499 F. Supp. 490. The court of appeals' opinion of May 18, 1981 (Pet. App. A-1 to A-37) is reported at 646 F. 2d 925. The opinion on rehearing of the court of appeals (Pet. App. A-38 to A-40) is reported at 653 F. 2d 941.[1]

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[1]During the 16-year history of this lawsuit, the case has repeatedly been the subject of opinions by the district court and the court of appeals. Some of these earlier opinions are reported. *E.g.*, 293 F. Supp. 84 (W.D. La. 1968), 417 F. 2d 801 (1969); 422 F. 2d 814 (1970); 423 F. 2d 1132 (1970); 434 F. 2d 144 (1970). For the convenience of the Court, opinions and other documents that are relevant to the instant petition for a writ of certiorari and not part of petitioners' appendix have been lodged with the Clerk of this Court.

JURISDICTION

The decision of the court of appeals was entered on May 18, 1981 (Pet. App. A-3). A petition for rehearing was filed on June 12, 1981. It was denied on July 9, 1981 (*ibid.*). Another petition for rehearing was filed on June 15, 1981. On August 14, 1981, an opinion on rehearing was issued and judgment was entered (Pet. App. A-38 to A-40). The petition for a writ of certiorari was filed on November 10, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The private respondents represent the black school children and parents of Rapides Parish, Louisiana. On March 23, 1965, they filed this action against the Rapides Parish School Board alleging that it was operating a dual school system, with one set of schools for white pupils staffed by white teachers and one for blacks staffed by black teachers, in violation of 42 U.S.C. 1983 and the Fourteenth Amendment. The United States intervened on August 17, 1965, pursuant to 42 U.S.C. 2000h-2.

On July 23, 1965, the district court approved a desegregation plan containing a "free transfer" provision. With minor modifications, it remained in place until 1969. From 1969 until 1971 various motions, appeals, remands and alternative plans were considered.

On August 9, 1971, the district court put into place a new desegregation plan (R. 1230-1244).[2] On May 11, 1973, the United States sought supplemental relief because, after two years' experience with the plan, the enrollments projected under it had never been met, and because the Board had failed to comply with provisions of the district court's order

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[2]"R." references are to the excerpts from the record on appeal that have been lodged with the Clerk.

(R. 1376-1380). On July 30, 1973, the district court adjusted attendance zones to increase white enrollment at Peabody High School and Jones Street Junior High School, and approved the construction of a new elementary school (R. 1411-1417). The United States withdrew its appeal from this order after the district court modified its judgment so that it explicitly provided for the United States to seek supplemental relief if the projected enrollments for the two secondary schools were not met or if the new elementary school did not open as a desegregated school (R. 1455-1456, 1462).

At the close of the following school year in May 1974, the United States filed a second motion for supplemental relief (R. 1493-1504). The basis for the motion was that the enrollment projections for the two secondary schools had never been met, and that ten schools in Alexandria which were to have been desegregated under the 1971 plan had remained virtually all-black and enrolled 70% of the black students in the City (R. 1501-1502). In addition, the motion alleged that the Board had maintained and reinforced segregation by, *inter alia*, providing assistance to non-public schools, selecting sites and attendance zones for new schools so as to enhance segregation, and failing to enforce school attendance lines (R. 1493-1499). The United States sought new desegregation efforts affecting schools in Alexandria (Wards 1 and 8), and in the southeast corner of the parish (Ward 3) (R. 1493, 1502). After negotiations, the parties resolved some of the issues raised in the government's pending motion (R. 1532-1534). The remaining parts of the motion were scheduled for a hearing in June 1976. At that time, the Board agreed to the further desegregation of Ward 3; a consent order to that effect was entered on September 15, 1976 (R. 1730). The district court then suspended consideration of the remaining elements of the United States' motion "until further orders of the Court" (R. 1636), stating (R. 1635) that additional desegregation

> would severely impair the Board's ability to satisfy its current and proposed commitments, would adversely affect the Board's efforts to meet those commitments, [and] would jeopardize the substantial progress made by the Board through the entire system to date.

The court took no further action on the motion of the United States until 1979, when the private plaintiffs moved for desegregation of the remaining one-race schools and the government formally renewed its request for a hearing on its motion.

At the hearing on these motions on April 29-30, 1980, testimony was presented on the continued existence of one-race schools, on the United States' proposed desegregation plan, on the private plaintiffs' claim of employment discrimination and on their request for attorneys' fees. The United States also introduced documentary evidence, unrebutted by the Board, of additional acts of intentional segregation between 1969 and 1975. The Board opposed the United States' plan but submitted no proposal of its own (Pet. App. A-8).

On June 6, 1980, the district court entered a preliminary opinion (R. 2055-2056) ruling that the Board had failed to meet its affirmative duty under *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), to eliminate racially identifiable schools, finding that the Rapides Parish school system is not unitary, and announcing that it intended to design its own plan. The district court did not make any findings on the United States' unrefuted evidence of additional acts of segregation.

After receiving comments from the parties, the court issued its own plan on August 6, 1980 (Pet. App. A-41 to A-56). The court subsequently amended the plan in minor respects and ordered its immediate implementation. The Board appealed (R. 2296) and applied for a stay pending

appeal (R. 2297). The stay was denied by the district court (R. 2298), by the court of appeals, by Justice Powell, and by the full Supreme Court (449 U.S. 811 (1980)).

The court of appeals issued a single decision in this and related cases on May 18, 1981.[3] First, the court of appeals concluded that the district court correctly applied the appropriate legal standards in finding further relief necessary (Pet. App. A-20). The court emphasized the continued existence in Rapides Parish of one-race schools that have never been desegregated (Pet. App. A-21). Consequently, the racial composition of the schools "may not be justified by pointing to 'white flight' as a permissible causative to continued imbalance." *Ibid.* Second, the court of appeals found that the district court had not abused its discretion in fashioning its desegregation plan. However, the court of appeals held that the factual findings supporting the portion of the district court's plan involving pupils and facilities in Wards 3 and 4 were insufficient to explain the choice of remedies there, and remanded the case for further findings (Pet. App. A-27 to A-28). The court of appeals emphasized the need, because the district court's plan required the closure of two rural schools, to explore alternative measures

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[3]Intervenors, who have not sought certiorari, included a parent group from Forest Hill (a rural area of the parish), various officials of the State of Louisiana, including Richard E. Lee (a state court judge of the Ninth Judicial District Court of Rapides Parish), certain individual parents, and the State of Louisiana. Most appealed from a series of injunctions issued by the district court in December 1980 and January 1981 to enforce its August 6, 1980, desegregation order, and specifically to prevent three white students (with the aid of various state officials) from circumventing the order by attending the virtually all white Buckeye High School, rather than the integrated school to which they were assigned under the desegregation plan (Pet. App. A-14 to A-18).

and, if necessary, to state specific reasons for the rejection of those alternatives (Pet. App. A-28).[4]

On remand, the district court on July 22, 1981, issued an opinion setting forth in detail its reasons for the portion of the plan affecting Wards 3 and 4, modifying the attendance zones with respect to the Jones Street Junior High School so as to reduce the time spent traveling, and rejecting the proferred alternative plans, at least some of which would have affected other schools in the system.[5] A notice of appeal was filed by the Board on July 29, 1981, and by the Forest Hill intervenors on August 7, 1981. The matter is currently pending before the court of appeals.[6]

ARGUMENT

1. Petitioners contend that the courts below erred in concluding that the Rapides Parish school system has never dismantled its unconstitutionally segregated school system. But petitioners have not satisfied their burden of demonstrating error in the concurrent findings by both the district court and the court of appeals that the Rapides Parish public school system had never been unitary.[7] This Court has repeatedly said it will not undertake to review concurrent findings of fact by two courts below in the absence of a

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[4]On rehearing, the court of appeals also directed the district court on remand to consider matters relating to the racial composition of school faculty and staff (Pet. App. A-38 to A-40). That issue is presently pending in the district court.

[5]A copy of this opinion is included in the materials lodged with the Clerk.

[6]The Board's brief was filed November 20, 1981. The government's brief has not yet been filed.

[7]As of May 31, 1980, the Rapides Parish schools enrolled 24,622 students, of whom 8,793 (35.7%) were black and 15,829 (67.3%) were white (Pet. App. A-47). In 1980, prior to implementation of the plan challenged here, the Board operated 52 schools of which nine schools had remained virtually all-black since before the desegregation process began in 1965 (Pet. App. A-8 n.2).

"very obvious and exceptional showing of error." *E.g., Graver Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275 (1949). Petitioners have specified no particular legal errors, much less made a showing in support of alleged errors. They are unable to do so because both courts below applied well settled legal standards in reaching their conclusions.

a. The agreements worked out in 1976, in partial response to the second motion for supplemental relief of the United States, had more limited objectives than creating a plan which would establish a unitary system. The balance of the motion of the United States for more complete relief which, if granted, would have resulted in a unitary system, remained pending until finally brought on for a hearing in 1979. The compromises reached in 1976, in the wake of the second motion for supplemental relief, were at best part of a non-final "step at a time" plan, one not calculated to lead to a unitary system because it was "incomplete at inception." *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424, 435 (1976).

b. Petitioners concede that Rapides Parish once operated a dual school system (Pet. 14); they nevertheless argue that it became unitary before a comprehensive plan was ever in place. They rely on a combination of (1) the passage of time since the Board officially discontinued its policy of assigning all black students to black schools and all white students to white schools (Pet. 4, 14-15) and (2) the board's past implementation of desegregation plans in parts of the parish (Pet. 3-4, 16).[8]

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[8] Petitioners correctly do not rely on early unappealable statements of the district court that various plans would render the system unitary (R. 1239-1240, 1418). Those statements must be read in light of the district court's unappealed and apparently uncontested order of September 17, 1973, deleting its declaration of unitariness and pointing out that if projected enrollments (at two schools at issue in that order) did not materialize, further consideration of the plan would be necessary (R.

Mere discontinuance of a prior policy of intentional racial segregation, however, serves only to begin, not end, the inquiry. *Green* v. *County School Board*, 391 U.S. 430, 437 (1968). Here, the steps taken by petitioners in the direction of desegregation were, at best, piecemeal. Indeed, a comprehensive desegregation plan was never in place in Rapides Parish prior to 1980 (in part due to a delay imposed by the district court between 1976 and 1979).

Contrary to petitioners' suggestion (Pet. 11-12), this is not a case where only a small number of black students continue to attend one-race schools, most vestiges of segregation having been purged from the system by implementation of desegregation plans in the past. For example, in May 1980 ten of the 52 public schools in Rapides Parish remained over 92% black (Pet. App. A-45 to A-46). With one exception,[9] all of these schools were created and maintained for black students under the dual school system mandated by state law, and had never been attended by any significant number of white students.

c. A school district may present evidence to justify the continued existence of one-race schools. "Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominately of one race, they have the burden of showing that such school assignments

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1455-1456). Those projections, like the ones in 1971, did not materialize. In 1980, the same district judge who had issued the plan in 1971 ruled that the system was "not unitary" (R. 2055).

[9]Acadian Elementary was a white school under the dual school system and changed from 100% white to 100% black in the early seventies. This is precisely the kind of school for which petitioners could have presented sufficient evidence to justify a one-race school. However, they failed to do so. Therefore, Acadian is in no different posture than the black schools in Charlotte-Mecklenburg which had once been white but were nevertheless included in the plan approved in *Swann*, *supra*, 402 U.S. at 7-11.

are genuinely nondiscriminatory." *Swann, supra*, 402 U.S. at 26. However, at the 1980 hearings petitioners presented no plan and insufficient evidence to justify the parish's one-race schools.

Without offering any supporting evidence, petitioners now assert (Pet. 9-11, 15-21) that the racial composition of the remaining predominantly black schools in Rapides Parish is the result of demographic trends—such as changes in residential housing patterns and "white flight"—rather than intentional acts of petitioners.[10] However, the "bare allegation" that one-race schools are due to housing patterns is insufficient to satisfy petitioners' burden under *Swann, supra*, of establishing that remaining one-race schools are not the result of present or past discrimination, *Dandridge* v. *Jefferson Parish School Board*, 456 F. 2d 552, 553 (5th Cir.), cert. denied, 409 U.S. 978 (1972). Such allegations are particularly unpersuasive here, where all but one of the all-black schools at issue have been so continuously since they opened under the dual school system.

2. There is no merit to petitioners' suggestion (Pet. 24-27) that the remedy imposed by the district court exceeded the scope of the violation. The dual school system operated on a parish-wide basis, with every school serving blacks or whites, but not both. Since the constitutional violation was systemwide, a systemwide remedy was appropriate. See, *e.g., Dayton Board of Education* v. *Brinkman*, 443 U.S. 526 (1979); *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406 (1977); *Swann, supra*, 402 U.S. at 16. The court correctly viewed the school system as a whole, but tailored

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[10]Petitioners' assertions overlook the fact that at the hearing in April 1980, the United States presented evidence that petitioners have engaged in a series of actions that have maintained and reinforced segregation. This evidence remains unrefuted, and establishes an additional basis for the district court's order requiring desegregation of the remaining all-black schools (R. 2009-2016).

the relief to desegregate the ten remaining all-black schools. Indeed, the district court carefully pursued its duty of "adjusting and reconciling public and private needs." *Brown* v. *Board of Education*, 349 U.S. 294, 300 (1955). For example, the court concluded it was not practicable to desegregate all classes in grades K-2 by mandatory measures. Therefore, among the schools directly affected by the district court's plan, it is anticipated that at least three K-2 schools will remain more than 97% black (Pet. App. A-48). Elementary schools in Wards 5, 6, 7, 8 and 11 are left completely unaffected by the court's plan (Pet. App. A-10 to A-12).[11]

Over the long course of this lawsuit, the court has given the Board every opportunity to present a plan of its own that would make the system unitary. Petitioners elected not to make any proposal. Where, as here, the local school authorities have failed to remedy past wrongs, the district court must take remedial measures. *Swann, supra*, 402 U.S. at 15. The court plan is reasonably calculated to achieve its ultimate objective. Contrary to petitioners' suggestion (Pet. 27), the court of appeals has neither approved of "racial balancing" nor "intrude[d] into the operation of public schools." It has simply approved implementation of a constitutional desegregation plan.

In any event, consideration of petitioners' objections to the remedial plan devised by the district court would require this Court to undertake a comprehensive review of the overall district court plan for the Rapides Parish public school system. If such a review were at all warranted, it should not be undertaken before the entire plan is before

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[11] Those students in the rural areas of the parish affected by the plan have long been required to use buses to get to school. Under the plan, they are simply being transported similar distances in different directions to get to school (*e.g.*, Pet. App. A-54).

this Court. Because parts of the plan to which petitioners object are presently before the courts below, petitioners can only speculate as to the outcome of those proceedings (Pet. 5 n.2, 6 n.3).[12] The Court should accordingly decline to exercise its discretionary jurisdiction in the present posture of the case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1982

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[12]The district court has also modified the plan as it concerns Wards 3 and 4, and that aspect of the plan is again before the court of appeals.

DOJ-1982-01